

VBF VIETNAM BUSINESS FORUM

ANNUAL VIETNAM BUSINESS FORUM 2020

Challenges & Opportunities in the new normal



Hanoi, December 22nd, 2020

DISCLAIMER

The Vietnam Business Forum (“**VBF**”) is a structured and ongoing policy dialogue between the Vietnamese Government and the local and the foreign business community for a favorable business environment that attracts private sector investment and stimulates sustainable economic growth in Vietnam.

This publication was created for the Annual Vietnam Business Forum 2020 on December 22nd, 2020 in Hanoi.

The conclusions and judgments contained in this publication, as well as presentations made by businesses’ representatives at the Forum, should not be attributed to, and do not necessarily represent the views of, the VBF Consortium Board, or the VBF Secretariat, or its co-chairing institutions including Vietnam’s Ministry of Planning and Investment, the World Bank Group, and IFC - a member of the World Bank Group. These parties do not guarantee the accuracy of the data in this publication and the aforesaid presentations, and accept no responsibility for any consequences of their use.

This publication is distributed subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated on a commercial basis.



TABLE OF CONTENTS

I. SESSION 1: PRESENTATIONS BY CHAMBERS

- 1.1 Position Paper of Vietnam Chamber of Commerce and Industry – VCCI
- 1.2 Position Paper of European Chamber of Commerce – EuroCham
- 1.3.1 Speech of American Chamber of Commerce – AmCham
- 1.3.2 Position Paper of American Chamber of Commerce – AmCham
- 1.4.1 Speech of Korean Chamber of Commerce – KoCham
- 1.4.2 Position Paper of Korean Chamber of Commerce – KoCham
- 1.5.1 Speech of The Japanese Chamber of Commerce and Industry in Vietnam – JCCI
- 1.5.2 Position Paper of The Japanese Chamber of Commerce and Industry in Vietnam – JCCI
- 1.6 Position Paper of British Chamber of Commerce Vietnam – BritCham
- 1.7 Position Paper of Australian Chamber of Commerce – AusCham
- 1.8 Position Paper of Indian Chamber of Commerce – InCham

II. SESSION 2: POSITION PAPERS OF WORKING GROUPS

- 2.1 Position Paper of Power and Energy Working Group
- 2.2 Position Paper of Human Resources Working Group
- 2.3 Position Paper of Education and Training Working Group
- 2.4 Position Paper of Investment and Trade Working Group
- 2.5 Position Paper of Infrastructure Working Group
- 2.6 Position Paper of Banking Working Group
- 2.7 Position Paper of Capital Markets Working Group
- 2.8 Position Paper of Tax & Customs Working Group
- 2.9 Position Paper of Tourism Working Group
- 2.10 Position Paper of Agri-Business Working Group
- 2.11 Position Paper of Mining Working Group

III. APPENDIX

- 3.1 Minutes of Meeting with the General Department of Customs on 30th September 2020
- 3.2 Summary of Workshop with the Government on 2nd October 2020
- 3.3 Minutes of Meeting with the Ministry of Finance on 25th November 2020
- 3.4 Minutes of Energy Day on 3rd December 2020
- 3.5 Minutes of Meeting with Prime Minister Nguyen Xuan Phuc on 10th December 2020
- 3.6 Summary of Annual VBF 2020

I. SECTION 1

PRESENTATIONS BY CHAMBERS



**POSITION PAPER OF VIETNAM CHAMBER OF COMMERCE AND INDUSTRY
AT ANNUAL VIETNAM BUSINESS FORUM 2020**

***SUPPORTING BUSINESSES TO WEATHER COVID-19 AFTERMATHS
AND CONTINUE TO IMPROVE BUSINESS ENVIRONMENT***

The COVID-19 pandemic has wreaked havoc on the year 2020 with far-reaching impacts on a global scale. As of December 15, 2020, over 73 million people were infected, 1.6 million people were killed by the pandemic across 235 countries and territories¹; and these dreadful numbers show no sign of decline as the Covid-19 pandemic continues to evolve all around the world. Not only posing health risks to the community, the Covid-19 pandemic disrupted supply chains, narrowed both aggregate supply and demand, and increased financial risks to bring the world economy into a recession. The corporate bankruptcy wave is taking place worldwide, where the estimated percentage of insolvent businesses mounts up to 35% between 2019 and 2021.² This will inevitably lead to a wave of job cuts among workers, when the International Labor Organization (ILO, September 2020) calculated the global working-hour losses in the third quarter of 2020 as 12.1. %, equivalent to 345 million full-time jobs. In its Global Economic Outlook Report, the World Bank (WB) anticipated that in 2020 the world economy could see a negative growth of -5.2%, which would be the worst economic recession since World War II.³

When the first case of COVID-19 infection was discovered in Vietnam on January 23, 2020, the Government took urgent and drastic action to contain the pandemic. Along with medical measures, many bold moves have been applied such as: strictly control the border, restrict international air routes and some domestic ones, apply strict social distancing during March-April 2020, etc. When the second wave of Covid-19 suddenly emerged on July 25, 2020, the Government adopted risk-based measures to control the pandemic with more effective and better-coordinated solutions across different sectors and levels. As of October 1, 2020, Vietnam had only 1,095 infection cases, with 35 deaths⁴; and so far Vietnam had 30 consecutive days of no community infection.

Complicated developments of the Covid-19 pandemic in Vietnam as well as in the world have taken a great toll on the economy, production and business activities of Vietnamese businesses. According to the Report on the socio-economic situation of the first 9 months in 2020 by the General Statistics Office, GDP in the first 9 months increased by 2.12%, the lowest growth rate for the same period during the 2011-2020 period. In 11 months, nearly 93.5 thousand enterprises suspended their business for a definite period or waiting for dissolution procedures, up 15.6% yoy. On average, there are 8.5 thousand enterprises withdrew from the market each month. Some industries are seriously affected, such as: hospitality and catering services, with an estimated 11-month revenue of 461.2 trillion dong accounting for 10% of the total and down 13.7% yoy (the same period in 2019 increased 9.6%); travel and tourism, with 11-month travel revenue estimated at 16.6 trillion dong, accounting for 0.4% of the total and down 58.6% yoy (the same period in

¹Ministry of Health, the website on acute respiratory infections Covid-19, retrieved on December 15, 2020 from <https://ncov.moh.gov.vn/>

² About 35% of global businesses can go bankrupt due to the COVID-19 pandemic, retrieved at <http://thoibaotaichinhvietnam.vn/pages/quoc-te/2020-07-21/khoang-35-doanh-nghiep-toan-cau-co-the-to-do-do-dich-covid-19-89766.aspx>

³ World Bank, Global Economic Outlook, June 2020, available at <https://www.worldbank.org/en/publication/global-economic-prospects>

⁴ Ministry of Health, the website on acute respiratory infections Covid-19, retrieved on December 15, 2020 from <https://ncov.moh.gov.vn/>

2019 increased by 9.9 %); passenger transportation has declined 29.6% and cargo transportation decreased 6.2% in 11 months of 2020 compared to the same period in 2019. Businesses in distress also mean decrease in the number of jobs. Generally, in the first 9 months of the year, the number of employees aged 15 years and over who are working is 53.1 million people, a decrease of 6.5% yoy.⁵

Having that said, the negative effects of the Covid-19 pandemic in Vietnam have been considerably limited compared to many other countries in the world. Except for a few localities put under lockdown due to critical pandemic severity, many activities in daily life can still take place under new normal conditions in the remaining provinces and cities across the country. Therefore, against the gloomy backdrop of the world economy due to Covid-19's aftermaths, Vietnam's economy still managed to achieve a positive GDP growth rate of +2.12% in the first 9 months of 2020. This lists Vietnam as one of the few countries to post positive growth in the world. It should be noted that all three sectors of industry, trade/service, agriculture-forestry-fisheries maintained positive growth.⁶ As COVID-19 continues to rage across the globe and disrupt international trade, Vietnam's total export and import turnover in the first 11 months of the year reached 489.1 billion USD, up by 3.5% yoy, of which exports reached 254.6 billion USD, up by 5.3%; imports reached 234.5 billion USD, up by 1.5% yoy. In which, the export turnover of the domestic economic sector reached 73 billion USD, up 1.6%, accounting for 28.7% of the total. Generally, in the first 11 months of 2020, the trade balance was estimated to have an export surplus of 20.1 billion USD, surpassing 10.8 billion USD yoy.

The aforementioned economic successes are the result of the State's efforts from the beginning of the year to contain the Covid-19 pandemic and recover businesses' production and business activities. On June 08, 2020, the National Assembly voted to ratify the Free Trade Agreement (EVFTA) and the Investment Protection Agreement (EVIPA) between Vietnam and the European Union. Built upon that basis, the Government quickly developed and issued a number of guiding documents for EVFTA implementation, opening up new opportunities for Vietnamese businesses to this potential market. The National Assembly has also passed a number of important laws, in the direction of improved openness, such as the revised Law on Enterprises, the revised Law on Investment, the revised Law on Construction, and the Law on Public-Private Partnership. Right from the beginning of the year, the Government issued Resolution 02 on continuing to improve the business environment and competitiveness with many specific solutions.

And in response to the Covid-19's serious impacts on the Vietnamese economy, the Government has stepped up administrative procedure reforms and IT application in solving administrative procedures with the National E-Service Portal.⁷ The Government also continued its efforts in reviewing and simplifying business conditions with a focus on business regulation reform and conflict elimination. In particular, in May 2020, the Government issued Resolution 68 on streamlining and simplifying regulations related to business activities in the period of 2020 - 2025, with very concrete goals: cut down by 20% of the number of regulations and 20% of the compliance cost related to business activities.

⁵ General Statistics Office, Socio-Economic Situation in September and the first 9 months of 2020, available at <https://www.gso.gov.vn/default.aspx?tabid=621&ItemID=19760>

⁶ The agriculture-forestry-fisheries sector increased by 1.84%, contributing 13.62% to the overall growth; industry and construction increased by 3.08%, contributing 58.35%; the service sector increased by 1.37%, contributing 28.03%. General Statistics Office, Socio-Economic Situation in September and the first 9 months of 2020, available at <https://www.gso.gov.vn/default.aspx?tabid=621&ItemID=19760>

⁷ By the end of September 2020, 1,298 administrative procedures were available on the National E-Service Portal, of which 818 were public services for businesses. People's Newspaper, National E-Service Portal: The most effective channel to "modernize" administrative procedures, retrieved on September 25, 2020 at <https://nhandan.com.vn/tin-tuc-su-kien/dich-vu-cong-quoc-gia-kenh-huu-hieu-nhat-hien-dai-hoa-thu-tuc-hanh-chinh-618128/>

The aforementioned economic successes are also attributed to the outstanding efforts of Vietnamese businesses in this unprecedented challenging situation. Many businesses have proactively set up scenarios to cope with difficulties, make great efforts to maintain production, take initiative in sourcing raw materials, and change products to survive. All businesses try to win even small orders to ensure that their employees have jobs and income security.⁸ Businesses' measures to cope with the Covid-19 pandemic include providing PPE to employees, applying new/more flexible production and business methods, stockpiling of goods and materials, finding new supply chain solutions, training digital skills for employees, etc. More than that, even amidst extreme difficulties, businesses have been giving helping hands to the Government in the fight against the Covid-19, by donating, providing medical devices and PPE, and so on. Many businesses have provided practical assistance to people in many provinces and cities nationwide, such as installing rice ATM, free meals, etc. for needy people affected by Covid-19 pandemic.

Businesses are expecting a great deal on Government solutions to overcome the challenges posed by the Covid-19 pandemic. Surveys by VCCI and the World Bank show that businesses particularly appreciate measures taken by the Government to support businesses. For example, zero interest loan to pay employees, reschedule loans, reduce interest rates, suspend contribution of social insurance, health insurance, unemployment insurance, delayed contribution of trade union fees, extension on tax and land rental payment, reduction and extension of corporate income tax payment, extension of VAT payment, etc. However, these support measures should be adjusted in a timely manner in terms of application conditions, to suit the reality and businesses' needs. The lessons learned from the successful containment of the Covid-19 translation can be fully applied to supporting businesses to restore production and business development. It is the flexible and proactive management of the Government, close monitoring of the practical situation for appropriate and timely solutions; proactive provision of complete, transparent, broad and timely information; selection and application of risk-based pandemic handling measures; and focus on effective coordination among sectors and levels, etc.

In addition to pressing needs for specific actions to cut costs for businesses to deal with challenges posed by COVID-19, the business community also expects the Government to take concrete and quick measures to ***immediately address bottlenecks that are hindering businesses from capitalizing on integration opportunities from FTAs in general and EVFTA in particular to recover from COVID-19 and continue to grow.*** Specifically:

Regarding human resources, it is suggested that the Government make immediate investment at least in implementing the following activities:

- Develop and implement specialized training programs for technical workers in the current most essential supporting engineering industries. The decision of the Prime Minister to make October 4 as Vietnam Labor Skills Day is a very encouraging signal, showing the Government's strong support for this issue. However, what matters next is we need to have industry-specific Skills Training Programs that are relevant to the supporting industries as part of the key value chains, and part of a specific strategy to attract shifting FDI chain;
- Conduct an evidence-based and efficient research on the job market forecast in the next 5-10 years. The research should be able to address the question of which industry will develop and require what labor in the coming time. This will inform the strategies for human resource training (in university training institutions, vocational schools, etc.) for higher feasibility and effectiveness.

⁸ People's Newspaper, Businesses endeavor to maintain production and business, on August 13, 2020, retrieved at <https://nhandan.com.vn/tin-chung1/doanh-nghiep-no-luc-duy-tri-san-xuat-kinh-doanh--612794/>

- Review the entire TVET system and develop a strategy to support the institutions, at least for professions that are identified as highly labor-intensive in the near future (as confirmed by the aforesaid Forecast Research's findings).

In terms of infrastructure, VCCI and the business community would propose the Government to direct the implementation of the following urgent solutions:

- Focus on effective implementation of the Law on PPP and the Law on Public Investment with priority being given to the transport infrastructure sector and unfinished projects;
- Immediately conduct a study identifying necessary traffic routes (road, waterway, railway) connecting key production areas (agriculture, industry) to international border gates, thereby proposing an investment program to develop and upgrade these identified systems;
- Invest in or call for investment in development and upgrading of required logistics systems at key international border gates, especially for key border gates for specific goods (perishable goods or goods subject to special storage, etc.).

In terms of enhancing the products' competitiveness, although this is a task specific to each business, the business community expects the Government to support businesses in the following issues:

- In each Vietnam Foreign Trade Office, (i) establish a market and business matching portal, especially with the EU market and markets with which Vietnam already has established an FTA (with information about trade commitments with Vietnam; import and export procedures; relevant regulatory provisions; market features, distribution channels, etc.; focal points and partners with potential demand); (ii) implement trade promotion programs for Vietnamese goods abroad (Vietnam Days; Fairs and Exhibitions for made-in-Vietnam products; Entrepreneur/Business Matching Programs, etc.);
- As for groups of agricultural products that the importing countries have specific requirements on technical standards, food hygiene and safety (for example, irradiation, inspection must be done before loading), the Government can support by establishing technical centers to (i) guide producers and exporters in fulfilling their requests; (ii) perform inspections of the goods with charge waiver/discount against the importing country's standards; (iii) coordinate with a technical unit designated by the Partner to accelerate the fulfillment of technical requirements.

Along with that, to facilitate business recovery and development in the coming time, the business community is expecting the Government to ***further improve the business environment and national competitiveness, with a focus on reforming administrative procedures, business conditions, and cutting costs for businesses***. These specifically include:

- *Focus on reforming some cumbersome administrative procedures:* Many businesses report difficulties during their fulfillment of administrative procedures including land, tax, social insurance, construction, market management, traffic, fire prevention, environment, treasury, and labor.
- *Further promote regulatory reform on business conditions.* In recent times, the Government has made great efforts to streamline business conditions by reviewing and abolishing thousands of conditions for trading capital prescribed in hundreds of Circulars by ministries, and consolidating them to a Decree of the Government. The annual survey with 10,000 businesses

in 63 provinces and cities of VCCI in 2019 showed that the rate of businesses having difficulty applying for a license decreased to 35%, from 42% in 2018. However, it should be noted that 35% of businesses having difficulty applying for a business license is still a relatively large number. Resolution 68, issued by the new Government in May 2020, is expected to trigger a wave of business condition reforms in 2020, when tasked ministries need to issue plans to streamline and simplify regulations related to business activities within 20 days from the date the Resolution is issued and must review, evaluate and develop streamlining and simplification plans before October 1, 2020.

- Focus on reviewing and optimizing cross-sector administrative procedures, especially procedures related to investment, construction, land, and environment. Deploy administrative procedure reform in the direction of reducing the compliance cost burden for businesses and deterring the emergence of informal costs. Accelerate the application of information technology in handling administrative procedures, increase the number of online public services of level 3 and level 4 SLA. Aim towards establishing interconnection among different state management agencies on enterprise databases to ensure unified and concerted state management of businesses.
- Improve the efficiency of public administrative centers at the provincial and district levels, radically apply information technology and maximize the number of administrative procedures to be handled at these centers.
- Enhance public disclosure on the website of government agencies, especially the full posting of information such as local development plans, master plans, public investment projects, tender projects, investment attraction projects, PPP investment projects, processes, procedures and results of administrative procedures handled by sectors and levels.
- Further mitigate the burden of business inspection, in the direction of applying the risk-based inspection principles. Clearly designate a local focal point to control the enterprise inspection activities in the area, including inspections by the central agencies; soon publicize on the website of state agencies the list of entities to be inspected according to the plan, and the results of the inspection once the conclusions become available.
- Promote stronger reform in specialized inspection. Radically apply the risk-based inspection principles, shift from pre-checks to post-checks, minimize overlaps in specialized management and inspection.
- Coordinate with business associations to conduct regular and substantive business dialogues. Ensure these meetings and dialogues are attended by micro, small and medium businesses. Timely solve problems encountered by businesses; assign the provincial business association to monitor and supervise the handling process; periodically conduct public assessment of the performance of solving problems from businesses. Timely post information about feedback, assessment, proposals and complaints of businesses; continue to organize and evaluate the enforcement by the line Departments, urban districts and peripheral districts through the development and publication of the provincial Department and District Competitiveness Index (DDCI) on an annual basis.
- Develop and implement business support programs in an effective and substantive manner, focusing on micro, small and medium businesses, proactively researching and providing information to businesses on market access, financing access, labor market information, etc.

- Address overlaps and ambiguity in the legal framework for business. In recent years, VCCI has received many recommendations on shortcomings from businesses, associations, and local authorities about overlapping and conflicting regulations in business laws that are causing difficulties for businesses and reported them to the National Assembly and the Government. The National Assembly has passed the Law on Investment 2020, which addresses many conflicts and overlaps that VCCI has pointed out. The Government has also established a Working Group for Overlapping Legal Review, led by the Minister of Justice. The draft report is being prepared for submission to the National Assembly. However, in the long run, in order to avoid this scenario, it is necessary to change the process of drafting legal documents to better control the consistency in regulatory provisions.



EUROCHAM POSITION PAPER AT ANNUAL VIETNAM BUSINESS FORUM 2020

CHALLENGES AND OPPORTUNITIES IN THE NEW NORMAL

H.E. Mr. Pham Binh Minh, Deputy Prime Minister and Minister of Foreign Affairs,

Respected Ministers and Government Officials, Country Directors of the World Bank and International Finance Corporation, colleagues of the Vietnam Business Forum and Chambers of Commerce,

In 2020, European businesses – like companies around the world – are feeling the impact of COVID-19. For instance, the EuroCham Business Climate Index (BCI) – our quarterly survey of EU business leaders – fell to its lowest ever score of 26 per cent in quarter 1. This drop in positive sentiment was a direct impact of COVID-19, and was no reflection on Vietnam or its trade and investment environment. Since then, and following the government’s world-leading economic and public health response, we have seen that score improve to now reach 57.5 per cent in quarter 3. The overall global impact of COVID-19 remains negative, as the international community continues to deal with the impact of the virus. However, its impact on our members has lessened since quarter 1.

This confirms that confidence is returning to the market after a fall during the initial emergence of COVID-19. However, the BCI also shows that European business leaders continue to feel the impact of the global pandemic, and remain cautious about the future prospects of their enterprises.

Business leaders were more positive about their own enterprise in Quarter 3, with 40 per cent describing their performance as either “Excellent” or “Good” – more than double the 18 per cent recorded in the previous three-month period. Quarter 4 looks to be even more promising, with 44 per cent predicting a strong end to 2020. Meanwhile, most companies are anticipating stabilization in their headcount (65 per cent) and investment plans (57 per cent), with just under half (44 per cent) expecting to see an increase in their revenue and orders. Even so, it is clear that European business leaders still see themselves operating in difficult times. This, once again, reminds us that the situation continues to be unprecedented and unpredictable, even on a global scale.

EuroCham, its Executive Board, and our 17 Sector Committees appreciate the strengthened co-operation with the Vietnamese Government in working on the policies and regulations to support businesses during and after COVID-19. In particular, we welcome regulations such as the Decree on Deferral of Tax Payment and Land Rental, the Resolution on Tasks and Measures to Continue Removing Difficulties for Production and Business, and proposals of a rescue package with widespread coverage. This would enable the equal protection of domestic and foreign businesses, given Vietnam’s strong integration into global supply chains and capital flows.

We worked together with the Government and the Advisory Council for Administrative Procedure Reforms (ACAPR) to support European FDIs and enable the swift entrance of European investors and experts. We also worked together through donations to the Vietnam Fatherland Front’s fight against the pandemic while also maintaining sustainable supplies of drugs and medical devices. And, together, we helped to secure jobs on a large scale, promoting public investment disbursement. EuroCham is committed to maintaining this partnership with the Government of

Vietnam, through good times and bad. And we will continue to support the country through our policies and other contributions, which we will mobilise at every opportunity to help the country recover successfully and to ensure its continued economic development and social security.

As the voice of European business, we would like to take this opportunity to reflect our members' concerns. In that spirit, we would like to suggest that the Government consider further effective and timely financial support and rescue packages for many sectors. This would give them the motivation and spirit of sharing for the whole economy. We continue to propose reducing CIT incurred for all enterprises in all impacted industries, including MNCs and SMEs, by 50 per cent. And we also propose reducing by half the PIT for income for all Vietnam tax residents, allowing a 50 per cent VAT reduction to stimulate demand and consumption, and a reduction of 50 per cent on compulsory social security contributions for all impacted actors.

A faster and more proactive policy of feedback and action in response to these recommendations, as well as their effective implementation by Vietnam, could help to maintain and attract more EU FDI and facilitate the re-positioning of the country's economy in the post-COVID times.

EU-Vietnam Free Trade Agreement

Despite COVID-19, this year still marks an impressive and very important milestone in Vietnam's cooperation with the European Union. Finally, the EU-Vietnam Free Trade Agreement was ratified by the National Assembly in June 2020 and entered into force on the 1st August. The full implementation of such a sophisticated and comprehensive agreement could help to boost production, trade, and investment and facilitate faster recovery in Vietnam to the new normal.

The support of EuroCham and the international community will be key to the success of Vietnam and Vietnamese companies in the taking full advantage of the FTA. The European business community is working full-force to support the Government, local authorities and Vietnamese companies for the implementation phase. We are collaborating with the Ministry of Industry and Trade, the EU Delegation to Vietnam, and the Ministry of Foreign Affairs to promote the EVFTA in many localities. We have signed an MOU with Vietnam Maritime Administration, Ministry of Transport on collaboration on the EVFTA and on the promotion of the marine and shipping industry in Vietnam and Europe.

It is also in our plan to launch with VCCI the EU-Vietnam Business Council to support European and Vietnamese businesses to understand and best utilize the benefits of the EVFTA, and also to overcome common temporary barriers and obstacles in extending market access to Europe and Vietnam. We will also continue to work with the Ministry of Finance and the General Department of Customs to provide technical trainings to our members and Vietnamese companies on the origin of goods and related administrative customs procedures to facilitate exports and imports. We look forward to receiving further guidance from the Government and Ministry of Finance and to a timely issuing of the Decree containing the list of tariff schedules for the implementation in Vietnam guiding our members on their business operations and strategies. We also understand that the application of such tariff reductions will be from the 1st August 2020 and businesses shall get the support of MOF in refunding the current taxes paid during the absence of this guiding document.

Besides the EVFTA, below are the key issues and recommendations from our 17 Sector Committee to the Government. In it, our members offer opportunities and also raise the challenges for the country's economic and social security recovery.

I. Sustainable food chains, agriculture and farming

A. EuroCham Food and Agri-Aqua Business Sector Committee

1. A golden opportunity to restructure the livestock farming industry linked to demand: an agro-food policy

The outbreak of African Swine Fever (ASF) in Vietnam has been causing considerable adverse effects to the livestock industry and challenges in Government management. Twenty-five per cent of the country's total pig herd could be lost to the ASF by year's end.¹ As a direct consequence, demand for feed from the hog industry has fallen about 20 to 25 per cent; pig feed production and respective trading activities regarding feed ingredients such as corn in Vietnam are expected to fall. The poultry sector has softened the blow for the pig feed and farming sector with consumption of other meat going up.² However, this shift in protein demand will also cause trouble for livestock planning overall as production shift from pig to poultry cannot happen overnight and will become increasingly difficult at the large-scale farming level. Furthermore, Vietnam's October 2019 consumer price index has reached a three-year high in the context of depressing pork supplies towards the end of 2019 and the beginning of 2020³. We, therefore, note that an unfavourable impact to the pig farming industry, with pork being the key type of meat in Vietnam, would also deliver an unwanted situation for the poultry industry, feed ingredients trading activities, and Government's annual target.

Vietnam has put in the place its Law on Animal Husbandry 2018 regulating breeding activities, rights and obligations of organisations and individuals in livestock activities, national management of breeding, being effective from the 1st of January 2020. However, the master plan of Vietnam agriculture is only to 2020, with the vision to 2030, with the accompanying Decision 124/QĐ-TTg, dated 2 February 2012.⁴ So, our Sector Committee believes that it would be the best time to have the updated master plan of Vietnam agriculture to 2030 following the 2018 Law on Livestock. The Minister of Agriculture and Rural Development, Mr. Nguyen Xuan Cuong, also stressed the importance of forming strong connectivity between production and demand. At the same time, Vietnam's agriculture sector will also be subjected to agricultural restructuring and the production of key products at national, provincial, and communal levels to meet future target of export.⁵ Both the Law on Animal Husbandry 2018 and the direction of the Minister of Agriculture and Rural Development pose an interesting question about how the total domestic consumption and future export potential can be identified and forecasted accurately so that planning can be performed accordingly.

The Sector Committee notes that the connectivity between production and demand, stated by the MARD Minister, is an innovative approach which helps to minimise risks amid future challenges. In planning for 2030, there should be a review of the current situation and an assessment of how the ASF outbreak in China and COVID-19 have affected both Vietnamese production and trade activities. The incremental growth of cross-border export from Vietnam to China and the rising official export volume from other countries to China causes concern for Vietnam's local supply and import activities.⁶ This challenge of managing the total pig and pork supply in Vietnam

¹ "African swine fever: China's pig population may drop by 55 per cent," *CNBC*. Available at: <<https://www.cnn.com/2019/10/03/african-swine-fever-chinas-pig-population-may-drop-by-55percent.html>>, last accessed on 2 October 2019.

² "Vietnam's corn demand for pork feed falls on African swine fever", *Vietnamnews.vn*. Available at: <<https://www.spglobal.com/platts/en/market-insights/latest-news/agriculture/090919-vietnams-corn-demand-for-pork-feed-falls-on-african-swine-fever>> last accessed 9 September 2019

³ "October's CPI reaches three-year high," *Vietnamnews.vn*. Available at <<https://vietnamnews.vn/economy/537623/octobers-cpi-reaches-three-year-high.html#pEdcxuvCS03LaJYp.97>> last accessed on 30 October 2019.

⁴ Decision 124/QĐ-TTg dated 2 February 2012 of Prime Minister Nguyen Tan Dung approving the master plan of production development of agriculture to 2020 and a vision toward 2030.

⁵ "Vietnam seeks to boost agricultural production, consumption," *Vietnamnews.vn*. Available at: <<https://en.vietnamplus.vn/vietnam-seeks-to-boost-agricultural-production-consumption/147739.vnp>> last accessed on 8 December, 2018.

⁶ "Increasing pork prices in China a magnet for Vietnamese traders," *Vnexpress.net*. Available at <<https://e.vnexpress.net/news/business/industries/increasing-pork-prices-in-china-a-magnet-for-vietnamese-traders-3979439.html>>, last accessed on 9 September 2019.

indicates that national planning for both total supply and demand must consider different global scenarios regarding trading activities.

FAABS proposes a three-phase approach for livestock planning linked to demand:

- Phase 1: Understand and forecast total demand, import and export activities, namely: The total protein consumption landscape in Vietnam; cross-border export and import activities in Vietnam; export potential; import planning; and global trade activities landscape.
- Phase 2: Consider the livestock sector's long-term targets when restructuring the planning, including but not limited to traceability, food safety and standards, and improving the living standards of farmers.
- Phase 3: Build the 2030 livestock plan considering all integrated sub-sectors into a national agro-food policy.

The new national agro-food policy must cover all the sub-sectors that are important to Vietnam's food security including rice, fisheries, livestock, crops, high-value agriculture, agro-based industry and agro tourism.

The combined effect of ASF and COVID-19 has had a severe impact on the farmers and Vietnam agri-food industry until today. Immediate supporting packages in terms of reducing income loss and access to finance for farmers are essential to regain farmers' trust and to strengthen farmers' capability for short-term recovery. Moreover, since export markets and global supply chain are disrupted, support from the government for farmers to quickly re-capture exports to the EU, US, Japan, China and other markets are vital in both the short and medium terms. The EVFTA's implementation is also an opportunity in the long-run. And the government would be strongly recommended to develop the Vietnam agri-food sector in order to get a quicker rebound from 2021 and beyond.

2. Towards a ban of Azodicarbonamide in the food industry

Potassium bromate (e924) has been banned since 2015 in Vietnam and has, as such, been removed from the positive list of food additives. According to Official Letter 62/ATTP-SP of the Vietnam Food Administration⁷, the Vietnamese authorities managed to enforce the ban, offering a cleaner working environment to the bakery workers, and ultimately offering a better image of the local bakery industry to the region. The ban proved that Vietnam's bakery industry could adapt to stricter regulations when justified and explained to its main stakeholders. As a result, the bakery industry of Vietnam saw an increase of its export and is now more often considered for regional supplies of breads in different forms.

After the enforcement of the ban on Potassium Bromate, several local producers of bread improvers started using Azodicarbonamide as a replacement. These bread improvers are mainly consumed by craft bakeries (representing a large majority of the local production of bread), mainly for its "price per kilo" benefit. Azodicarbonamide (ADA) is an oxidant. The principal end-use of azodicarbonamide is as a blowing agent in the rubber and plastics industries. It is used in the expansion of a wide range of polymers, including polyvinyl chloride, polyolefins, and natural and synthetic rubbers.

⁷ Official Letter 62/ATTP-SP dated 13 January 2015 of Vietnam Food Administration, Ministry of Health on banning Kali Bromate for its use in food products.

ADA's threat to human health remains under study, but most countries have banned it as a matter of prevention and good practice. Today use of ADA in food is banned in the EU, Australia, New Zealand, India, Singapore, Japan, Indonesia, the Philippines, and Hong Kong. In the EU, in food, ADA has always been banned in the harmonized EU member states food regulation. Since 2005, the EU has also banned ADA in food contact material (SEM can be present in foods because of migration from sealing gaskets used in the metal lids of jars and bottles).

Vietnam has included ADA (e927a) in its positive list, enabling manufacturers and importers to register bread improvers containing this additive. To this day, only local manufacturers offer formulas containing ADA, serving only the craft segment, where food safety is less of a concern, and where "branding" of the bread produced is not a priority. All major bread producers, for example: industrials, in-store bakeries in supermarkets, and other bakery chains, ban ADA from their recipes, in order to protect their brand, as no "branded" product wishes to be associated with an additive that remains highly controversial.

With Codex's decision to review ADA, this process could take several years before coming to any scientific conclusion, the Sector Committee would strongly advise Vietnam to join the community of countries that have decided not to allow its usage in food applications.

Referring to the positive list of food additives currently in use in the Vietnamese Law on Food, we believe Azodicarbonamide (e927a) should be removed and banned, in order to upgrade the bakery industry of the country. EuroCham FAABS would be happy to exchange further with Vietnam Food Administrative and MOIT on this topic and relevant scientific background.

We recommend that ADA is banned from the positive list, ensuring it completely disappears from the market. Should the Vietnam Food Administration decide to maintain ADA as part of the positive list, its usage should be regulated, enabling consumers to be aware of what is being used. As Codex Alimentarius today considers ADA as an additive, it also recommends specific "limits" in terms of dosage, for example. Whether a ban or stricter regulation is implemented, a transition period would need to be applied in order to enable local manufacturers and bakers to adjust prior to the law's enforcement.

B. EuroCham Nutritional Foods Group

1. Contradiction in the guiding documents of Customs with the current tax tariff

The Official Letter 7183/TCHQ-TXNK of the General Department of Customs guides "*liquid supplemented food/health supplements/functional foods...belongs to 2202 heading*", without knowing that Functional Foods group includes Medical Foods (stipulated in Circular 43/2014/TT-BYT of Ministry of Health). Medical Foods have been classified in 1901 and 2106 headings under current Tax Tariff. This Customs guidance's contradiction with the current Tax Tariff has led to many difficulties for importers, as well as local Customs authorities for implementation.

EuroCham has raised this issue at the WhiteBook 2020 Launch and ACAPR Dialogue on 30 June 2020 in Hanoi. The representative of the General Customs Department, Ministry of Finance, promised to answer later but there has been no official feedback or guidance until now. Hence, once again, we would like to recommend the General Department of Customs clarify and, if possible delete the wording "functional foods" as mentioned in its Official Letter 7183/TCHQ-TXNK. If there is any issue in classifying the products declared generally as "functional foods", we recommend the General Department of Customs coordinate with the Ministry of Health and other relevant authorities such as the General Department of Tax, Ministry of Finance to determine

their correct classification, thus, leading to the correct and consistent application of the tax tariffs for the products.

2. Issue of the list of additives permitted for use in food

The Draft dated 30 October 2018 of Circular 4/2019/TT-BYT had good provisions to update the list of food additives, such as Points 1 & 4 Article 15 of the Draft. However, these good provisions have been removed from Circular 24, which lead to the serious issue in which food trading/production in Vietnam cannot catch-up with the world, due to the fact that the list is not updated with Codex standards, it does not include many additives which are recognised as safe and widely used in developed countries such as the European Union and the United States. The list only recognises food flavours assessed by the Joint FAO/WHO Expert Committee on Food Additives (“**JECFA**”) and does not recognise those assessed by Federal Emergency Management Agency (“**FEMA**”). The International Organisation of the Flavour Industry (“**IOFI**”) although countries in the region and most countries in the world allow the use of food flavours assessed by other organisations such as FEMA and IOFI. These hinder food manufacturers/traders in Vietnam from applying scientific advances, so they fall behind and lose their competitive advantage.

We recommend the Ministry of Health soon revise Circular 24/2019/TT-BYT by restoring Points 1 & 4 Article 15 of the Draft dated 30 October 2018 of Circular 24: to permit automatic updating of the list of additives according to Codex standards; to permit registration of food products containing new food additives if they have been certified safe by the origin country; to consider adding new additives that are recognised as safe and widely used in developed countries such as the European Union, the United States; and food flavours assessed by FEMA and IOFI.

3. The procedure for issuing Health Certificates for exported food products is timing-consuming and complicated

Currently, the procedure for issuing Health Certificate for exported food products under MOH supervision is unnecessarily complicated and time-consuming. This impacts on exportation, due to it being carried out in two rounds. The first round of testing is done at a laboratory designated by the Ministry of Health; and the second round by submitting the test certificate to VFA for the issuance of a medical certificate (5 working days).

For comparison, seafood is also a kind of food, but its export certificates are issued by the Ministry of Agriculture and Rural Development (MARD) according to a quick one-round procedure in Article 30⁸ and Article 32⁹ of Circular 48/2013/TT-BNNPTNT (“Circular 48”): the inspection and certification agency shall appoint inspectors to check and take samples to test the batch within 02 (two) working days, and issue the certificate immediately without sending the test results to the Ministry.

⁸ Article 30 of the Circular 48/2013/TT-BNNPTNT of Ministry of Agriculture and Rural Development on inspection and certification of the safety of fishery food products for export:

“1. The inspection authority shall assign inspectors to inspect and take samples of the shipment within 02 working days from the day suggested by the owner or the day agreed by the owner and the inspection authority.

2. Contents of and procedures for inspection of the shipment shall comply with regulations in Appendix XV issued together with this Circular.”

⁹ Article 32 of the Circular 48/2013/TT-BNNPTNT of Ministry of Agriculture and Rural Development on inspection and certification of the safety of fishery food products for export:

“1. Within 02 working days from the day on which the shipment is exported, the applicant shall provide in writing sufficient information defined in the specimen of certificate according to the requirement of the competent authority of the import country to the inspection authority which shall consider issuing the certificate. Within 01 working day from the day on which the sufficient information is received, the inspection authority shall issue the certificate to the shipment using the form of corresponding import market if the testing results the shipment fulfill requirements.

2. After 90 working days from the day on which the inspection is carried out, if the applicant fails to provide enough information to the inspection authority, the applicant shall apply for the inspection as prescribed in Article 29 of this Circular.”

MARD also applies priority classification based on risk management: only testing one time every 2 months for the establishments who have VietGap certification. This encourages establishments to enhance quality management.

To facilitate exports, we recommend the Ministry of Health amend Circular 52/2015/TT-BYT similar to the Ministry of Agriculture and Rural Development's amendment of Circular 48/2013/TT-BNNPTNT. Specifically, we recommend cutting two-rounds of issuing Health Certificates for export food products to 1: the designated laboratory shall take samples of the batch for testing within 02 (two) working days and issue the Health Certificate immediately after obtaining the satisfactory test results.

If the Ministry of Health deems it really necessary to keep the 2-round process, it should reduce the time to issue the certificate to 1 working day from the date of receipt of the complete application, as the Ministry of Agriculture and Rural Development did when issuing the certificate for export (Article 32 of Circular 48/2013/TT-BNNPTNT).

We also recommend MOH have priority classification based on risk management similar to Circular 48: the establishments who have advanced management certifications such as GMP/HACCP/ISO22000 are required to test one time every 2 months.

4. Problem of regulations on limits of micro-organisms

The Official Letter 1180/ATTP-PCTTR dated 18 May, 2020 of the Vietnam Food Administration (“VFA”) answered EuroCham’s Letter 2804/2020/MOH/EUC-NFG stating that Decision 46/2007/QD-BYT cannot be annulled because there is no alternative document for some food groups.

FAABS would like to make clear that Decision 46/2007/QD-BYT of the Ministry of Health was issued 13 years ago, contains some points which are unreasonable, non-scientific, as well as inconsistent provisions compared to international regulations and standards, causing difficulties for production and business.

In particular: in Section 6.9 of Decision 46/2007/QD-BYT on dried food and nutritious food for children, special substitute of food, the limit of *Bacillus cereus* is 10 CFU/g (ml), which is very low. Whereas QCVN 8:3:2012/BYT does not specify any limit of *Bacillus cereus* for food for children more than 1 year-old. The Regulations of EC 1441/2007 are the same as those of QCVN 8:3.

The concepts of dry food, nutritious food for children, and special substitute of food in Section 6.9 of Decision 46/2007/QD-BYT are also not defined in any legal document. This leads to the deduction for arbitrary application based on personal views of each officer, causing difficulties for enterprises.

We recommend the Ministry of Health revise and issue a new decision to remove Section 6.9 of Decision 46/2007/QD-BYT or remove the limit of *Bacillus cereus* in this section in order to be consistent with international regulations and standards.

C. EuroCham Croplife Vietnam

Crop protection tools and their assessment

The adoption of plant science products is an important solution to support the Government to achieve the goals of sustainable development, improving farmer incomes, addressing climate change and ensuring food security.

The competitiveness of Vietnamese farmers and future investment in agricultural innovation can be ensured by implementing and complying with a transparent, science-based regulatory system consistent with international best practice.

Training farmers to use agriculture innovation applications in a responsible and effective way will produce a more positive impact than simply restricting their use.

We recommend that crop protection tools should be properly assessed through a consistent, scientifically rigorous process in line with risk-based, internationally accepted methods and standards. Regarding biotech, the science-based, predictable regulatory framework on genetically modified technology in Vietnam needs to be implemented to help Vietnam achieve its development goals and improve local farmer incomes. Moreover, Vietnamese farmers should be encouraged to have access to the most advanced crop protection and biotechnology products supported by high-quality training and education. This will ensure that they continue to produce more safe, affordable and nutritious food for the community and export in a responsible manner.

II. Sustainable healthcare and supply of medical devices

A. Medical Devices and Diagnostics Sector Committee

1. Machine installations in hospitals

Decree 151/2017/NĐ-CP has not prescribed the forms of lending or installing machines and does not specifically guide the implementation for some forms of socialisation such as leasing. Healthcare establishments and enterprises are facing difficulties because the placing and borrowing models have been applied in practice for a long time but there have been no detailed guiding documents, leading to difficulty in settling insurance payments.

The solution aligned upon by the Ministry of Health and Vietnam Social Security in Notice 1039/TB-BYT-BHXHVN dated 2 October 2018 concluding the cross-ministerial meeting is: continue proceeding payments for medical examination and treatment expenses, subject to health insurance, of the services performed by placed or borrowed machines, provided by the winning suppliers, following the bidding result as per the Law on Bidding and signed contracts; after expiry of the contract, continued installation shall be subject to regulations under Decree 151/2017/ND-CP on management and use of public assets. However, Decree 151 has not prescribed the forms of lending or installing machines and does not specifically guide the implementation for some forms of socialisation such as leasing. Currently, many contracts on placement or borrowing have expired while healthcare establishments and enterprises are unclear about the next steps, due to the lack of consistent guidance for implementation.

In order to ensure transparency, publicity and harmony of interests between medical examination and treatment establishments, patients and health insurance fund; improve healthcare treatment for people and modernize the testing and diagnostic activities, MDDSC respectfully requests the Government, Ministry of Health, Vietnam Social Security and relevant authorities:

- Supplement the installation model, in which companies of winning reagents and consumables are allowed to install machines, into the official, consistent legislative documents among MOF, MOH and VSS in order to have a public and transparent legal framework;

- Continue to allow the extension of the expired contracts, and proceed payments of technical services performed by placed and borrowed machines provided by companies winning reagents and consumables for healthcare establishments to use the winning reagents and consumables; while waiting for the Government to issue amended or supplemented regulations; and
- Issue official guiding documents for healthcare establishments and relevant parties to implement. Circulate the documents and provide training for relevant Ministries to allow better understanding of the policy as well as full compliance with the law.

2. Value-added Tax (“VAT”) for imported medical devices

According to Decree 36/2016/ND-CP and Decree 169/2018/ND-CP, the classification of medical devices is implemented by classifying organisations that have declared eligibility to categorise medical devices, while the Ministry of Health does not do the classification.

Despite regulations in Decree 36/2016/ND-CP and Decree 169/2018/ND-CP, tax and customs authorities now still require companies to provide certification from the Ministry of Health for imported medical devices. Specifically, certification of the Ministry of Health is required to apply VAT of 5per cent for medical equipment, chemicals used for testing and sterilisation which is not listed under Circular 26/2015/TT-BTC and Circular 83/2014/TT-BTC. Therefore, VAT of 5per cent cannot be applied for many imported products which are medical devices under Decree 36/2016/ND-CP and Decree 169/2018/ND-CP, such as:

- Class A medical device that already have the certification of declaration of applied standards issued by a Department of Health in line with Decree 36 and Decree 169;
- Medical devices that have been classified as B, C or D by a classifying organisation which are not in the required import license list under Circular 30/2015/TT-BYT;
- Raw materials, software, accessories and medical gas identified as medical devices and classified under group A, B, C, or D.

The Ministry of Finance is drafting the Circular amending, supplementing Circular 83/2014/TT-BTC and guiding documents. However, Circular 26/2015/TT-BTC is also a major challenge that requires attention. This is a long-term issue and has affected deeply the importing medical devices activities.

We recommend the Ministry of Finance issue a guiding document on applying VAT for imported medical devices as soon as possible, to ensure consistent implementation with Decree 36 and Decree 169. The Ministry of Finance is requested to provide a detailed timeline for amending Circular 26/2015/TT-BTC and Circular 83/2014/TT-BTC as soon as possible; and to publish a draft amending Circulars for comments as per the procedure of issuing legislative documents before their issuance.

B. Pharma Group

Today, Vietnam is doing well compared to many other countries in terms of healthcare coverage and budget management. There is also a decisive drive for administrative reform across Ministries to enable a better business and investment environment, which we are very thankful for.

The innovative pharmaceutical industry, with our long-term commitment to Vietnam, is actively exploring areas to further contribute our global expertise to improve health outcomes, expand investment to develop local capability, and support the Government in bringing the country's healthcare system to the next level of development.

In order to do so, companies need predictability and sustainability of the overall environment, especially in the legal framework. The industry has seen positive steps in recent regulations, and we also see opportunities to collaborate to continue enhancing the patient access and the investment climate:

1. Towards sustainable health financing solutions:

The innovative industry is eager to (i) in immediate term, support successful implementation of drug tendering policy that meets the Government's healthcare budget objectives, while ensuring patient access, and (ii) in mid-long term, bring our global expertise to contribute to the development of health financing solutions, to maintain a good funding balance and foster sector development.

2. Continue the drive for administrative reform across ministries, ensure regulatory harmonization with international standards, and avoid sudden/impractical policy changes that impact the business environment and disrupts the healthcare system

The innovative pharmaceutical industry fully believes in Vietnam's ability and potential to become a leading country in the region for quality healthcare, especially as demonstrated through the combat against COVID-19.

III. Consumers' choice in sustainable and rapid development

A. EuroCham Cosmetics Sector Committee

1. Certificate of Free Sale (CFS) for imported cosmetics

Clause 1 Article 10 of the Decree 69/2018/ND-CP on guidelines for the Law on Foreign Trade Management regulated *"A list of goods is issued and the power to manage CFS are provided for in Appendix V hereof."* In which included Cosmetics product and Clause 3, Article 10 regulates that *"3. A CFS must at least contain: a) Name of CFS issuing authority, b) CFS number and date of issue, c) Goods eligible for CFS, d) Type or category of goods eligible for CFS, dd) Manufacturer's name and address, e) The CFS clearly indicates that the goods are produced and freely sold in the market or the country of production or the country by which the CFS is issued, g) Full name and signature of the CFS signatory and seal of the CFS issuing authority."*

A CFS does not certify the product's quality or safety. The product having such a document, in many cases, might not actually be distributed in such countries. Therefore, in practice, the requirement of having a CFS in the proclamation dossier does not actually help to ensure the product quality or safety, but purely sets an unnecessary administrative burden.

In addition, the escalating COVID-19 situation in Vietnam and around the world is leading to the closure of offices or changing ways of working from home, causing many obstacles to the implementation of administrative procedures which prolonged or delayed implementing administrative procedure. Furthermore, since the entry into force of the EVFTA, the Ministry of Health (MOH) should not discriminate against products originating from EU countries by denying their exemption from CFS application to CPTPP-originating products.

As cosmetics are fast moving consumer goods, we recommend removing cosmetics from the list of CFS-required goods when importing. This is an unnecessary requirement which slows down the pace of businesses bringing goods to Vietnam, reducing the competitiveness of the Vietnamese market and because such an exemption has been given to CPTPP-originating products and not those from the EU. While waiting for MOH to consider our proposal, and due to the current COVID-19 situation, we propose accepting the electronic version of CFS which does not need consular legalisation during the epidemic. The enterprise will fully take responsibility for the legality of the document and will add a complete CFS after the COVID-19 pandemic ends.

2. Cosmetics Advertising

From a legislative point of view, such requirement is not in line with Article 20.4.b of the Law on Advertising, where only the cosmetics announcement sheet as prescribed by law provisions on medicines is required.¹⁰ From an industry practice point of view, this article also does not help much for advertising management by the Government and for dealing with violations compared with post market surveillance and monitoring the market. Additionally, it slows down the business activity and increases costs significantly. Furthermore, the traditional form of store business is being encouraged by the Government to switch to E-Commerce due to the need to close stores to prevent the pandemic. As required by the regulations on social distancing, the working forms of agencies also fluctuate from different localities, leading to delays in licensing activities to meet business needs. In addition, according to social distancing requirements, different local authorities are adopting different working methods, leading to delays in licensing activities, prolonging the timing to confirm cosmetic advertising content, which affects business activities.

We propose the removal of the pre-approval requirement for cosmetics advertising to ensure consistency in the legislation and to ensure practical business activities. While waiting for your consideration and final decision, we recommend not to submit a notice of promotional activities for online content during this period due to the very fast speed of changing products sold on E-Commerce platforms while the licensing time is long, especially in the COVID-19 phase. We suggest allowing the enterprise to take full responsibility for the accuracy and truthfulness of the advertising content.

3. Registration process for essential antiseptic products

There is a complex and lengthy process of registration for antiseptic products, especially those which are very important for fighting against COVID-19 such as hand sanitiser and surface disinfectant products. These are very commonly used products to protect health and hygiene for people, and are necessary for peoples' needs especially when the COVID-19 crisis in Vietnam has been getting more serious recently.

According to Decree 91/2016/ND-CPON on management of insecticidal and germicidal chemicals and preparations for household and medical use, the current registration process is very long – from 4-6 months – and we see some areas where this can be shortened, especially for simple products such as hand sanitisers and surface disinfectant. We propose that the Ministry of Health (MOH) consider simplifying the registration process, moving to online level 4, accepting the test results and efficacy reports from accredited labs in other countries especially when Vietnam does not have efficacy test procedure for SARS CoV-2 virus approved by MOH yet. At the dialogue, a representative from MOH said that he will come back with detailed response after working with relevant departments within MOH on this matter.

¹⁰ Article 20.4b, Law on Advertising dated 21 June, 2012: "Advertising conditions: Having the cosmetics announcement sheet as prescribed by law provisions on medicines when advertising cosmetics."

We would appreciate support being provided to those essential products so they can be quickly placed into the Vietnamese market, meeting the demand of Vietnamese consumers in protecting their health and fighting against the pandemic. This is also aligned with the way other countries in ASEAN manage these products. Specifically, most ASEAN countries approve a Hand Sanitiser Notification within 0-3 days; Singapore even does not require any product pre-approval for hand sanitiser products.

B. Mobility Sector Committee

1. Official Letter 7203/TCHQ-TXNK dated 11/11/2020

The General Department of Customs has issued Official Letter 7203/TCHQ-TXNK (OF 7203) which took effect immediately from 11 November 2020 - requesting the declaration of numerous details for Customs clearance regarding the kind of products, quantities, types, structural composition and properties in the case of parts made from mixed materials, power in Watt / kW. Point 6 of OL 7203 provides some context:

According to the guidance in Circular No. 39/2018 / TT-BTC dated 20/4/2018, the quantity (1) and Quantity (2) are the information criteria that Customs declarants must declare. However, data from the Department of Information shows that only 2% of companies declare quantity targets (2) on the customs declaration form. In addition, when checking the customs forms (in the case of the declaration of the yellow channel or red channel), the customs officer usually does not check the quantity declaration (2) on the customs declaration form, so the customs office does not request declarants must process additional declarations when the quantity indicator (2) is left blank, not declared.

Therefore, the statistics, inspection, evaluation and development of management policies (specifically, the price policy) for exported and imported goods are not accurate, facing in problem. "According to the above dispatch, in the future, the goods must be fully declared with the name, composition, properties, structure, content and there must be an additional weight of each item and the unit of weight to declare in the quantity column (2) on the declaration form to avoid mistake in the goods import procedure.

Automotive spare part imports are complex parts involving different materials and the information is not available to this level of detail.

Since 11 November 2020, the sudden application of OF 7203 has presented a challenge for automotive parts manufacturers and importers facing such request without coordination and notice lead time to get prepared. Due to the complex technology involved in some parts, some of the information requested will never be available.

It is generating additional delay to clear customs and cost for companies and customers. Such details do not generate any value and rather create a highly complex situation which complicates rather than simplifies doing business in Vietnam for companies, quite the opposite to the Prime Minister's objective.

UNECE documents for goods from the EU are already accepted under EVFTA. Therefore, to implement suddenly a new document like OF 7203 is an unnecessary technical barrier to trade for EU importers in Vietnam. We would like the Ministry of Transport to consider and implement now.

To solve what will rapidly become a major bottleneck to automotive spare parts for maintenance, warranty and technical recalls requested from importers and assemblers, we recommend that the General Department of Customs provides a flexible implementation period of three years to give the necessary time to manufacturers to identify and document such information and simplify the data requested.

2. Circular No: 41/2018/TT-BGTVT of Ministry of Transport dated 30 July 2018

The process actually described in the circular is partially in place, and importers are able to receive a 6 months valid and renewable certificate which allows the importer to sell the goods to the customers. Proper testing meeting requirements as described in the circular is still not possible at the moment.

Some below contents are unclear or not mentioned in Decree 74/2018/ND-CP and Circular 41/2018/TT-BGTVT (Circular 41):

- The Vietnam Register has not announced the official registration process of automotive parts.
- For a same part number under Circular 41 already registered and already having a valid certificate. This same part number has to go through the whole certification process again even if that part number was imported within a 6-month period.
- Increasing homologation costs: the requirement to certify service-purposed spare parts can lead to a situation where many parts will have to go through the certification process more than once. For example, a single front-vehicle light, when imported for production or when imported as part of a CBU, has been certified. However, when only one component (among 1,951 parts of such light) need to be replaced, such component needs to go through the certification process again. Furthermore, for typical spare parts such as plastic fuel tanks, windshield or headlights, due to their durability, they are imported with limited stock, even only one set, for accidental repair, technical recall or warranty. If such spare parts are all required to be certified, businesses have to import an excess number to have sufficient samples to apply for the certification. Because of these additional imports, the price of the product must increase significantly.

We recommend that only Circular 41-related spare parts not mounted in the imported CBU or CKD models - or different from the Original Equipment Manufacturer description for those models - should need homologation under Circular 41 and Decree 74.

This will exempt spare parts with the purpose of repair and replacing and allow importers to comply with their legal obligation to technical recall and warranty under Decree 116. We recommend that such certification be done once only, the first time upon the first importation of such commodities.

3. Vehicle Registration Tax-Fee incentive for environmentally friendly vehicles

Air quality is an ever-growing public health issue for people living in Hanoi and Ho Chi Minh City. Environmentally friendly vehicles use mild hybrid, hybrid and fully electric technologies. Because these are new technologies, they cost more to produce than vehicles using only petrol or Diesel.

With Decree 70/2020/ND-CP, the Government clearly supported the domestically manufactured and assembled vehicles by reducing by 50% of the registration taxes for customers until 31

December, 2020. Yet, there are no such registration incentives for environmentally-conscious customers to buy these models in Vietnam.

When the 50 per cent reduction on registration fees for locally-assembled models ends on 31 December, 2020 we suggest the Government apply the same 50 per cent registration tax reduction to mild hybrid, hybrid, and fully electrical vehicles in 2021 for a period up to three years to support the development of the environmentally friendly vehicles and express their commitment to a cleaner society.

IV. Human Resources and other supporting industries

A. Human Resources & Training Sector Committee

1. The draft Decree on foreign workers in Vietnam, replacing Decree 11/2016/ND-CP

a/ Minimum capital contribution for work permit exemption

With regards to Article 7.1.(a) of the draft Decree, the provision is that the owner or capital-contributing member of a limited liability company with a capital contribution of VND 5 billion or more is not subject to a work permit. The threshold of VND 5 billion for foreign investors is a very high threshold and will discourage foreign investors and FDI investments if they are still required to obtain a work permit.

Based on the Clauses 1 and 2, Article 154 of the Labour Code, we recommend setting a minimum threshold of VND 300 million. In practice, this is the amount required by the authorities as the minimum for a foreign-invested business. Thus, we recommend aligning the minimum capital contribution for the work permit exemption with the minimum applied by the authorities in practice and to keep the threshold low to encourage foreign investment and help to expedite Vietnam's recovery from the economic crisis caused by the COVID-19 pandemic.

In addition, Vietnam's WTO Services Chapter commitments cite the GATS language prohibiting quantitative restrictions on service providers (including among others any kind of minimum capital thresholds) except in certain sectors (e.g., credit institutions for the sake of national financial stability). In areas where services are opened, no such quantitative restriction can be imposed on a discriminatory basis (i.e., for foreign invested companies and not local ones).

b/ Duration of work permit

According to Article 20 of the draft Decree, *“the validity period of a renewed work permit complies with that of one of the cases specified in Article 11 of this Decree but the work permit can only be renewed once for a maximum period of 02 years”*. This provision may suggest that a foreigner will no longer be able to continue working in Vietnam after 4 years (2 years for the new work permit + 2 years for the work permit renewal).

We suggest including in the draft Decree that, for continuing to work in Vietnam beyond a 4-year period, a new work permit application shall be lodged and that the applicant is not required to leave Vietnam as part of this process. In addition, we seek clarification on whether a new application could be submitted before the expiry date of the original renewed work permit. We look forward to receiving the feedback from MOLISA on this and setting up a follow-up meeting to further discuss further. Moreover, for those foreigners seeking to submit new applications at the 4-year stage, we propose that previously submitted (and authenticated) documents should be

accepted, and that only newly issued documents (within the last 4 years) are required to be verified/certified/authenticated).

2. Online education training for teachers

We thank the Vietnamese Government for protecting its people - citizens, investors and families - creating the conditions for schools to reopen at a time when most around the world cannot. This makes us very optimistic about the future of Vietnam as an investment and education hub, and a role model for the world. In light of the current impact that COVID-19 pandemic has had on the education of children around the world, education has had to rapidly shift from traditional classroom settings to digital spaces and online learning. This is a new practice that requires expertise, training and technological skills to be impactful on the education of students to ensure they receive a quality education.

We strongly encourage the Vietnamese authorities – in particular the Ministry of Education and Training - to partner with international education institutions in Vietnam to provide teacher training in the areas of online education based on international best practice. This is an opportunity to enhance teacher ability and meet the needs of students.

3. Extension of forms of “internal transfer”

According to Clause 1, Article 3, Decree 11, *“1. Foreign workers internally reassigned in the company are the managers, chief executive officers, experts and technicians of a foreign enterprise which has established a commercial presence in Vietnam, are temporarily reassigned within the same enterprise to its commercial presence in Vietnam and have been employed by the foreign enterprise for at least 12 months.”*

According to Article 2, Circular 35/2016/TT-BCT issued by the Ministry of Industry and Trade dated 28th December 2016, commercial presence can be in the following forms: *“a) Foreign-invested business organizations; b) Representative offices and branches of foreign traders in Vietnam; c) Executive offices of foreign investors as stipulated business cooperation agreements.”*

The above regulation is being interpreted by the provincial Departments of Labours, Invalids & Social Affairs (DOLISA) that only the assignment of foreign employees from the overseas parent company to its wholly directly owned subsidiaries in Vietnam is considered an internal transfer while the mobilization of the employees from other group companies, even from the ultimate parent company to the Vietnam-based company or mobilization from the parent company to the branch or representative office of its subsidiary in Vietnam is not considered an internal transfer.

The DOLISA’s explanation of “internal transfer” is mis-reflects the fact of global mobilization of human resources of multinational companies. We recommend MOLISA to consider acknowledging the mobilization of employees within a group at the global level as internal transfer. We also recommend the Ministry of Industry and Trade to consider expanding the forms of commercial presence in Vietnam.

4. Other supporting policies:

a/ Foreign Contractor Tax (“FCT”) on reimbursements of employment costs of employees internally transferred by the parent company

Under Official Letter 17862/BTC-TCT dated 9th December 2014, the MOF guided the principle of no foreign contractor tax will be applicable on the reimbursements of employment costs to

overseas parent company if (i) the payments made by the subsidiary in Vietnam to the overseas parent company is purely reimbursement of costs actually incurred for employees who are internally transferred by the parent company to the subsidiary in Vietnam, and (ii) the foreign employees declared and paid personal income tax (“PIT”) sufficiently in Vietnam on their worldwide income. Recently, some local tax authorities have requested FDI company to pay FCT on such reimbursements due to that the assignees who are dispatched from the parent company to its Vietnam subsidiary are still under the management of the parent company.

We recommend the Ministry of Finance to consider providing guidance on non-taxation of FCT on reimbursement of employment costs of assignees to make sure that a consistent tax treatment will be adopted by local tax authorities.

b/ Tax year of 12 consecutive month period from the 1st arrival date to Vietnam

Under the current regulations, in case an individual stays in Vietnam for less than 183 days in a calendar year but for 183 days or more in the 12-consecutive-month period from the 1st arrival date to Vietnam, his/her 1st tax year is the 12-consecutive-month period from the 1st arrival date to Vietnam and the 2nd tax years onwards are the calendar years.

In practice, many controversial issues have incurred in relation to the finalization for the 12 consecutive month period as below:

- The determination of the “1st arrival date” might be ambiguous and inconsistent in many cases, for example:
- If prior to the official assignment, the expatriate has travelled to Vietnam for personal non-business purpose, are the personal days in Vietnam considered his/her 1st arrival date to Vietnam or not?
- If the expatriate repatriates upon completion of an assignment then comes back to Vietnam some years later, how is his/her 1st arrival date to Vietnam determined?

In determination of the outstanding PIT upon the 2nd tax year’s finalization, under the current regulations, the tax deductible for the overlapped period is the allocated tax obligation of the 1st tax year instead of the tax actually paid for the overlapped period. Therefore, in case the monthly income of the individual fluctuates significantly, the allocated tax obligation of the 1st tax year can be different from the tax actually paid. As a result, an overpaid/underpaid tax can be incurred in the 2nd year’s tax finalization although the monthly PIT has been calculated and paid correctly and sufficiently.

In case the expatriate is a tax resident in the 12 consecutive month period from the 1st arrival date to Vietnam but is a tax non-resident in the 2nd calendar year, his “hybrid” tax residency status in the overlapped periods might result in inconsistent tax treatments. For example: An individual’s first arrival date to Vietnam and last departure date from Vietnam were 10th May 2018 and 20th June 2019, respectively. He has stayed in Vietnam for more than 183 days in the period from 10th May 2018 to 09th May 2019 and has stayed in Vietnam for less than 183 days in the period from 1st January 2019 to 20th June 2019. Accordingly, he is a tax resident in the tax year from 10th May 2018 to 09th May 2019 and a tax non-resident in the tax year from 1st January 2019 to 20th June 2019. It is unclear whether the individual will be considered a tax resident or tax non-resident in the period from 1st January 2019 to 09th May 2019 and how the tax declaration for such period will be.

Tax year in tax declaration software (HTKK) is on a full month basis (i.e. from the 1st day of a month to the last day of another month), NOT from date to date. Therefore, the tax filing due date

might be incorrectly calculated by the tax management database system. As a result, it will be challenging, and time consuming for the tax authorities and the taxpayers to reconcile and calculate late payment interest (if any). The concept of “12 consecutive month period” is uncommon in tax regulations of many countries (e.g. Laos, Myanmar, Malaysia, Singapore, Philippines & Thailand, Korea). As a consequence, the taxpayers might face difficulties in application of the tax residence certificates and foreign tax credit.

We recommend the Ministry of Finance to consider removing cross year finalization to simplify the tax administrative procedures, avoid the inconsistent interpretation of tax regulations as well as in line with the international practice.

c/ Declaration of Vietnam-sourced income of short-term business travellers to Vietnam

According to the current regulations, it is understood that the foreigners are obliged to declare PIT in Vietnam on the income portion which is considered as Vietnam-sourced income but received overseas if such foreigners come to Vietnam to work for only 01 day. In fact, this regulation is not really significant and makes the tax compliance impossible, especially if the individual goes to Vietnam for business trip purpose of only several days.

In the world, many countries provided for some exemption thresholds for PIT declaration for the business travellers, for instance:

- United States: the number of days in the US does not exceed 90 days/year or US-sourced income does not exceed USD3,000/year;
- India: the number of days in India does not exceed 90 days/year; and
- Malaysia, Singapore: the number of days in these countries does not exceed 60 days/year.

Besides, per the labour regulations, the expatriates are also exempted from work permit application if they work in Vietnam for less than 30 days/trip or 90 days/year.

We would like to recommend the Ministry of Finance to specify threshold days for the short-term business travellers to be exempted from PIT declaration in Vietnam on their Vietnam-sourced income portion received overseas provided so that Vietnam’s regulations are in line with the international practice and the compliance of tax regulations become more feasible to the taxpayers.

d/ The exempted school fees for children of foreign employees working in Vietnam to study in Vietnam, for children of Vietnamese employees working overseas to study overseas

Per Point g.7, Clause 2, Article 2, Circular 111/2013/TT-BTC, “*the tuition fees for children of foreign employees working in Vietnam to study in Vietnam, for children of Vietnamese employees working abroad to study abroad from kindergarten to high school levels which is paid by the employer*” is considered as a non-taxable income.

Per Clause 1, Article 105, Education Law 2005, “*tuition, enrolment fees are contributions made by learners' families or learners to compensate for the costs incurred for educational activities*”. As such, tuition fees and enrolment fees under the Education Law 2005 is a very broad concept, which can be simply understood as covering any expenses incurred for learning activities, as all those expenses are to compensate for the costs of educational activities.

As Circular 111/2013/TT-BTC has not provided detailed guidance on the non-taxable tuition fees, in practice, local tax authorities are treating the admission fee, capital fees, English class fee, etc.

as taxable income. Accordingly, there is an inconsistency in the definition of tuition fee in Education Law and tax regulations.

We would recommend the Ministry of Education and Training to confirm whether expenses paid to the school by students and their parents (e.g. admission fees, capital fees, foreign language course's fees, soft skill course's fees, etc.) are tuition fees or not. We also kindly request the MOF to provide more detailed guidance on non-taxable tuition fees so that the tax regulations are consistently applied.

e/ Exclusion of the foreign employees from subjects of trade union ("TU") contributions

According to Article 5, Decree 191/2013/ND-CP of the Government on the TU contribution rate and contribution base, *"The contribution rate is at 2 per cent of the salary fund for social insurance contribution for employees. This salary fund is the total salary of employees who are subject to social insurance contribution according to the social insurance regulations."*

As the foreign employees have been subject to compulsory social insurance ("SI") since 1st December 2018 according to Decree 143/2018/ND-CP dated 15th October 2018 of the Government ("Decree 143"), some local labour federations have requested the enterprises to pay TU fees of 2 per cent for foreign employees who are subject to compulsory SI. However, Clause 1, Article 5, Law on Trade Union 2012 stipulated the right to establish, join and operate trade unions as follows: *"Vietnamese employees working in agencies, organizations and enterprises have right to establish, join and operate trade unions"*. Accordingly, foreigners cannot participate in trade union organisations. Therefore, it is not justifiable to require enterprises to pay TU fees for foreigners who are not allowed to participate in the TU.

We would like to recommend the Vietnam General Confederation of Labour, Ministry of Labour, Invalids and Social Affairs ("MOLISA") to consider providing detailed guidance to all provincial DOLISA that the foreign employees are not subject to TU fee contributions in order to make the TU and SI regulations become consistent and avoid the increase of cost burden for enterprises.

B. Transportation and Logistics Sector Committee

1. Application of E-signatures

Cross-border transactions have become more and more widespread, and e-signature solutions (e.g. DocuSign, SignNow, SignEasy, etc.) are being used more often by many international business partners. Especially in the context of the recent COVID-19 pandemic, the drawback of using a "wet" signature and seal has been revealed more clearly than ever.

In Vietnam, although the Law on E-transactions 2005 has been in effect for years, the provisions thereof on e-signatures have not been effectively applied in practice for the purpose of supporting business operations. The use of e-signatures still faces many barriers in terms of technology and legal validity.

The Transportation and Logistics Sector Committee suggests developing a mechanism to widely apply e-signature solutions in order to streamline technical requirements and recognize the legal validity of transactions/contracts signed by e-signatures.

2. Employee representative organisations at grass-roots level

Enterprises have been speeding up the preparation for the Labour Code 2019 coming into effect on 1st January 2021. In accordance with the requirements of the International Labour Organization (ILO), the Labour Code 2019 introduced the requirements for establishment and operation of “employee representative organisations at grass-roots level” in addition to the current traditional trade unions at grass-roots level.

Enterprises are still unclear about the scope of work, functions and powers of each employee representative organization at grass-roots level as well as interaction among these organizations within an enterprise. If these matters are not specifically and clearly guided, it may easily lead to failure to protect the interests of employees and create a cumbersome organizational structure at the enterprise.

The Transportation and Logistics Sector Committee suggests studying and timely providing guidance on the operation of employee representative organizations at grass-roots level to the effect that those are clearly regulated and avoid overlaps in terms of duties and powers amongst the organizations within an enterprise.

V. Green and Sustainable Development

A. Green Growth Sector Committee

1. Simplification of regulations for Behind the Meter Power Plants

All power generation projects, including Behind the Meter Power plants (i.e., off-grid projects without directly connecting to EVN's grid for on-site consumption by private power consumers) of capacity 1MWp to 50MWp which do not export any electricity to the EVN distribution grid, must seek approval for inclusion in the PDP.

Green Growth Sector Committee recommends that for behind-the-meter plants of between 1MWp and 50MWp (that export no power to the grid), the application process for inclusion in the PDP should be simplified. Specifically, the developer of those power plants can present to the provincial People's Committee (of the province or city where the power plants are located): the Feasibility Study, Notification document, a technical description of the power plant that explains how 100per cent of the energy will be consumed on-site, and power generation projection. Within 60 days, if there is no specific objection by the provincial-level People's Committee to the behind the meter power plant, it is automatically considered as approved and added to the provincial-level Power Development Plan. The provincial-level People's Committee can separately report to the MOIT as internal reports between different State management agencies for the MOIT's information.

2. Provide extension to the current Fit-in-Tariffs (FIT) and a new FIT

Onshore wind projects typically require around two years for project development, before they reach a financial investment decision. However, there are only 14 months until the current FIT expires, which challenges the business case for new projects to complete on time to qualify for the FIT. As a result, investors are not willing to commit to new projects with a commercial operation date (COD) of 2022 and beyond without confirmation of the FIT extension.

COVID-19 has caused a slowdown of wind project development in Vietnam, due to supply chain disruptions and limited mobility preventing investors from traveling to Vietnam to close financial decisions this year, as the middle of this year was a crucial time for investment to be made to qualify for some of the projects before the current FIT expiration. Moreover, to promote the investment, the government should introduce new FIT due to the following issues:

- **Slow levelised cost of energy (“LCOE”) reduction:** The pace of cost reduction in the past two years has been slower, due to a lack of scale effect and global bottleneck in turbines.
- **Rising Capital expenditure (“CAPEX”):** At the same time, project development costs have increased due to higher labour and land costs. As primary sites are already being developed, new projects will be located in the Mekong Delta, where CAPEX rates are up to 20per cent higher than in the central region. While capacity factors are marginally higher in the south, they are not high enough to compensate for the additional costs of construction.

We would like to propose that a reduction in the FIT level now would be premature. We contend that Vietnam will best meet its energy ambitions if the country implements: a six-month extension to the current onshore FIT, followed by a viable new FIT for onshore wind projects grid-connected by the end of 2023; and a two-year extension to the current offshore wind FIT to the end of 2023.

B. Tourism and Hospitality Sector Committee

1. Visa Regulation

The list of visa-exempt countries should be further expanded for post COVID-19; therefore, the Tourism Sector Committee can fulfil its key role to help develop tourism into a spearhead sector of Vietnam’s economy. Furthermore, we believe that it is inconsistent to have Free Trade Agreements (FTAs) with countries while still maintaining that tourists from those countries require a visa. In particular, with the implementation of the EU-Vietnam Free Trade Agreement on the 1st August 2020, we hope the Government will extend visa exemption from 7 to all EU Member States as a tool to enhance the competitiveness of Vietnam’s tourism industry. European tourists are important for Vietnam.

We recommend Vietnam expand the list of visa-exempt countries to include all those with whom Vietnam has FTAs with, once they are implemented and with an appropriate timeline, including all EU countries, significant trading or investment partners and targeted inbound tourism markets. It is also suggested to extend the period of recently announced visa exemptions and new exemptions to a 5-year period as well as extend the visa exemption period from 15 to 30 days. This will enhance the competitiveness of Vietnam’s tourism sector by enabling travellers to visit for long enough to discover Vietnam’s culture and natural beauty and will help to increase the spending per person while visiting Vietnam.

We also recommend providing short-stay visa exemption for the time of the event for business travellers and pre-registered groups and delegates entering Vietnam to specifically attend meetings, incentives, conferences and events (MICE). The high-yield MICE tourism is a dynamic segment of the global meetings industry and an important multiplier for related tourism and hospitality segments. Hassle-free visa regulations for short stay visas and dedicated fast-track immigration lanes for MICE travellers would make Vietnam more competitive and attractive to major international associations and business meetings.

2. Destination Marketing

Tourism plays an important role in Vietnam’s economy. The industry generated around 9.2 per cent of GDP in 2019. Furthermore, in light of the Government’s ambitious goal to develop tourism into a spearhead of the economy, it is imperative to recognise the sector’s contribution to the socio-economic welfare of the State in order to properly support it through an effective strategic plan for international tourism marketing to prepare for the post-COVID-19 period.

We recommend the establishment of a Vietnam Tourism Board which officially represents Vietnam in the outbound markets and which actively works with tour management companies, airlines and the media in those markets, being the go-to point for tourism companies when considering Vietnam as a destination for their clients. Good examples in ASEAN include the Singapore Tourism Board (www.stb.gov.sg) or the Thailand Tourism Board (www.tourismthailand.org).

Vietnam should allocate a more reasonable amount to the national tourism promotion fund from the State budget to support tourism promotion; focus promotion on target markets with a high and stable number of visitors, who tend to stay for a long time, visit regularly and spend more when travelling in Vietnam. It is also recommended to put in place region-wide coordination structures to focus and maximise the actions of cooperating provinces and facilitate cooperation. Finally, we recommend the establishment of improved mechanisms for communication between tourism-related businesses, associations and the public sector, work with industry groups and associations on a regular basis and coordinate organisational structures./.



**SPEECH OF AMERICAN CHAMBER OF COMMERCE
AT ANNUAL VBF WITH DEPUTY PRIME MINISTER PHAM BINH MINH
DATED DECEMBER 22ND, 2020**

*Presented by
Mrs. Virginia B. Foote
Chairman*

Your Excellency, we very much thank you for hearing from us today, especially for comments from the foreign business community.

First and foremost, we thank the Government for the care, thoroughness, and the unique success of Vietnam's actions against this terrible virus. We remain very optimistic for a good end to 2020 and a solid 2021.

I want to focus on a few issues that I think Vietnam can look at to prepare for the post-pandemic recovery.

First, the **digital economy** in general, and e-commerce, e-banking, fintech, modern cloud computing and e-government in particular, come out of the necessity to reduce face-to-face transactions and can enhance Vietnam's goal to reduce the use of cash overall. We foreign companies are intertwined with your domestic companies and hope the technological and regulatory requirements particular on cyber security can further help – not hurt – that process while being mindful of global standards being developed.

The second area we are very supportive of it are the plans for a **cleaner environment and a cleaner energy future**. Our members were pleased to see the Party's Resolutions 55 and 140 and will work with you on the investment needs.

We remain concerned that a very large future role for coal remains in drafts of PDP8 which will be dangerous to the environment and the health of population while coal is now an unnecessary and expensive technology. Instead of building coal plants, we recommend opening the door wider for renewables, and improving procedures that welcome foreign and domestic investment into renewables, transmission, LNG and offshore gas.

Particularly, we suggest the government look at reducing the very high tax burden on the development of your offshore gas reserves – which has been up to 50-60% on your own resources. Levelizing tax across LNG and offshore, and providing tax and tariffs incentives for solar, wind, and biomass can help make up the difference. We see look forward to early signing and implementation of the Direct Power Purchase Agreement provisions which can help green your supply chains. Also, we look to work with you to build a recycling industry under the new Environmental Law to help clean up Vietnam's waterways and cities, and attract new jobs as well.

And third, we know you have prioritized **administrative reform**. We continue to work with the Prime Minister's Advisory Council of Administrative Procedures Reform and we thank you for those efforts. Streamlining the regulatory environment adds value and encourages innovation - not only by attracting new and growing investment, but also by welcoming imports.

For example, the development of an innovative healthcare system for Vietnam and the importation of medicines and devices has been hampered by current regulations and thus patient access to critical, life-saving drugs and vaccines has been difficult. These delays also reduce predictability and sustainability of businesses, making it difficult to continue investing in public private partnerships. We look forward to working with you to find long term solutions and ensure consultation of policy reforms to help build an innovative healthcare system.

Another example are the difficulties imposed by foreign ownership limits regulations that seems to be a break on investment in insurance and banking in particular. In addition, streamlining approval processes for major infrastructure projects such as LNG and industrial parks can help facilitate investment for those projects, and signal a welcoming to other FDI.

And finally, under administrative burdens is the **tax system**. While Vietnam's tax rate of 20% is competitive, filing and paying taxes in Vietnam is still too high a burden compared to neighboring countries. And too many companies are also suffering from what seem to be unfair and non-transparent audits and reassessments or are losing their incentives when a law or an interpretation changes. We hope to see the use of Advance Pricing Agreements (APAs) which create the stability and predictability necessary for our companies integrating into valuable global supply chains, which of course is Vietnam's priority.

In closing, we thank you and your government again for all the effort in this difficult year and know we remain very optimistic about Vietnam and the years to come.



POSITION PAPER OF AMERICAN CHAMBER OF COMMERCE AT THE ANNUAL VIETNAM BUSINESS FORUM 2020

Thank you for the opportunity to present the American Chamber of Commerce's view of promoting an innovative and sustainable business environment in Vietnam and how to strengthen economy recovery during this global pandemic. This VBF comes at a time important for both foreign and domestic companies and provides a chance to prepare for a bright future.

The crisis has uprooted the ways people work, learn, relax, and consume. There is no business, no sector, and no economy beyond the reach of the devastating influence of this pandemic. Vietnam is on the road to economic recovery but it is likely to be a bumpy ride and we offer some ideas of how to make the recovery a success.

Vietnam's early action, extensive contact tracing, effective government communication and widespread public compliance has helped to mitigate the damage from this lethal virus. This success enabled a fast start on the path to economic recovery and as companies continue adjusting global supply chains, the government's effective response to the pandemic will further boost Vietnam's status as an attractive destination for investment.

The pandemic, as it has in so many other countries, has given a huge boost to Vietnam's digital economy in general, and e-commerce in particular. Schools and workplaces across the country turned to online solutions, and online orders increased tenfold during the shutdown. Organizations that quickly launched new platforms, apps, and services proved to be more resilient. They preserved their business continuity, transitioned to remote working and learning, and even experimented with new ways to respond to customer needs.

As we look at boosting economy recovery after Covid-19, there are many things the government can do right now to improve the business and investment climate and to attract new investment.

Enable mobility: establish predictable procedures for expatriates entering Vietnam

It is our hope that better systems can be established for our executives and technical support teams to enter the country. Safety is the priority, but we wish to work on more predictable procedures to make reentry possible for our personnel stranded overseas or those who cannot risk leaving Vietnam for fear of not being allowed to return. In addition, as new investors look at Vietnam, they need to be able to send personnel to examine and negotiate with their counterparts here. It is also our hope that the doors for tourism can begin to open – safely – to help the badly hurt hospitality industry. Greater coordination between government agencies and hospitality and transportation companies is crucial.

Accelerate e-government and e-commerce

We need accelerated use of e-government, e-commerce, e-banking, fintech, hyperscale cloud computing, and the overall reduction of paper and cash for all businesses. Replacing Vietnam's local cloud technical standards in state agencies with internationally recognized cloud certification and compliance mechanisms and adopting Cloud First Policies will enable the Government to choose the best technologies, strengthen digital resilience, and develop a robust e-government technology ecosystem. Setting good policies that enable the use of mobile wallets and other electronic payment systems can help facilitate more productive e-commerce and reduce opportunities for corruption and fraud. The social distancing period clearly demonstrated that e-systems save time and money. Accelerated implementation of these digital economy objectives can permanently reduce administrative costs and time burdens for both the Government and all businesses, and will attract new investors looking for global standards and ease of doing business. It will provide the foundation for Smart Cities infrastructure and services.

Thoroughly consider the Draft Decree of the Law on Cybersecurity

The backbone for e-systems is strong cyber security. While laws should accommodate relevant differences between platforms, given the fast-evolving nature of the sector, regulations should be written in technology-neutral ways that address the underlying issue rather than focusing on existing technologies or mandating specific technological fixes.

The business community is very concerned with what we understand is the recent Draft Implementing Decree of the Law on Cybersecurity. The draft contains a clause requiring domestic organizations to store data onshore automatically while foreign companies will be subject to data localization if they do not adequately comply with a three-step law enforcement process for content specified in the decree. This new proposal represents a serious step backwards by dividing the domestic and foreign business community, although our interests are aligned. It will also adversely impact the continued development of Vietnam's digital ecosystem.

Major Vietnamese enterprises and small startups alike have already contracted with offshore digital technology service providers for essential data services. This new requirement will cut off domestic companies from these offshore services they are using legally and successfully. This Draft Decree would be devastating for both domestic and foreign companies and the work we are doing together to advance Vietnam's economic interests. We have not yet been presented this new draft, and urge that we be allowed further consultation. This is a very serious issue for us and we would like to work towards a mutual solution.

Ensure a favorable climate for existing investors

We know the Prime Minister and Government have prioritized administrative reform to improve ease of doing business. It is critical that all companies and investors encounter a fair, transparent, predictable, and streamlined regulatory environment that values innovation - not only to attract new investment, but also to maintain and grow the investment that is already here. An overly restrictive legal framework and burdensome administrative procedures open opportunities for "rent seeking" and illegal fees. In contrast, streamlined administrative procedures can encourage and expedite increased foreign investment and support economic recovery.

In this regard, our members were initially concerned that the Draft Labor Decree might add repetitive procedures for hiring and employing our Vietnamese staff and workers. We are pleased to see that these concerns have been addressed and we thank the Government for that.

As the most trade-reliant economy in Southeast Asia, Vietnam's short-term challenge is its reliance on the rest of the world to drive its domestic growth. While Vietnam's economy is well-placed to stage a faster and stronger rebound than its regional neighbors, we believe the remainder of 2020 and the early months of 2021 still present many challenges. The main reason is that Vietnam's major trade partners have all been severely hit by the pandemic - especially the United States, which even now remains the largest export market for Vietnam.

Key exports such as furniture, footwear and apparel could see substantial declines in demand while regional competition grows. We fear a decline in U.S. orders and sales from Vietnam for the coming months, including into next year. In this difficult time, many businesses want to maintain their workforce for future growth. We hope the government will support businesses to help them keep workers employed - either at reduced compensation, or by reduced contributions and obligations to the government.

Maintain patient access to the best healthcare products and services

We urge the government to reduce restrictions and difficulties some of our products have entering the Vietnam market. For example, medicines face overly burdensome import and licensing requirements, even after being approved for Vietnamese patients. Ensuring continued Market Authorization (MA) validity is essential for both pharmaceutical companies and patient health. The serious backlogs are unworkable and have become an urgent issue; therefore, we urge the Government to install an automatic 12-month extension for MAs and temporarily put on hold regulations that are posing barriers for market access (such as CPPs) until they are revised. In addition, medical technology companies are facing new documentation and disclosure requirements that are inconsistent with international practice.

Apply fiscal policies supporting businesses

Despite the pandemic, there are opportunities for Vietnam to capture new business and investment.

American companies and investors have long complained about trade and industrial policies in other countries that put American businesses at a competitive disadvantage. Pre-Covid trade tensions highlighted concerns on concentrating production in a single country and the pandemic has escalated those concerns. Over the past 18 months, Vietnam has successfully picked up some of the supply chain shifts. We believe Vietnam will likely see even more such investment as companies come under increasing pressure to diversify their supply chains.

Our members believe that the government's effective response to the pandemic will also bolster Vietnam's status as an attractive market for continued M&A activity. Raising the Foreign Ownership Limit for banks could help strengthen local banks and make more capital available for business integration and growth. Our members also wish to participate in the divestment of state ownership, and hope to receive early and transparent guidance on the lifting of foreign ownership limits in these cases.

Accelerate sustainable projects

The pandemic has demonstrated that public and private sector organizations need proper infrastructure to overcome disruptions. Another promising area that can accelerate economic recovery is continuing infrastructure development and approving and expediting long-awaited investment projects. Streamlining approval processes can help facilitate investment for those projects, and provide the critical infrastructure needed to attract other FDI. This is also an opportunity to focus on sustainable projects. Our members were pleased to see the Party's

Resolution 55 on clean energy. Improving waste management, reducing carbon emissions and air quality concerns in Vietnam by accelerating the use of clean energy, clean vehicles, clean agriculture, and reducing the inefficiency and waste of energy, will help build a stronger circular economy and will spur job creation. U.S. companies are leaders in the energy sector and are eager to invest in offshore gas development, LNG, solar, wind and biomass energy projects, and wish to see private investment in electricity transmission lines in Vietnam. Opportunities in this area can help Vietnam meet its energy development needs while improving the environment.

AmCham members are also very interested in development of the recycling industry to help reduce plastic pollution in Vietnam's rivers and oceans. If we could establish a waste collection and recycling system, value would be assessed and a new piece of a circular economy developed. We thank the Ministry of Natural Resources and the Environment for their efforts working with us. In addition we would like to continue to work on ideas for industry and consumers to reduce the use of non-recyclable materials.

Apply new initiatives for integrating into global supply chains

Finally, while Vietnam's tax rate of 20% is competitive, data shows that filing and paying taxes in Vietnam is still too difficult compared to neighboring countries. Too many companies are also suffering from what seems to be unfair and non-transparent tax reassessments with penalties and interest. Investors need to see predictable and globally consistent tax and audit procedures, and avoid retroactive rulings. After many years, we still see that Vietnamese accounting standards are not in line with global standards, and we hope to see real progress on Advance Pricing Agreements (APA) which create the stability and predictability necessary for integrating into global supply chains. Progress in these tax areas will improve business conditions that strengthen the private sector, ensure economic and social development, attract additional investment, and promote prosperity here in Vietnam.

Our members represent billions of dollars in foreign investment, tens of thousands of direct employees, hundreds of thousands of indirect employees, and a significant share of Vietnam's exports and tax revenues. As we emphasized at our business summit last week, trusted partners prosper together. AmCham members stand with the Vietnamese people and we remain committed to partnering with Vietnamese authorities to ensure that business is not disrupted any more than necessary during this crisis and that new opportunities for the future are realized.

As we celebrate 25 years of diplomatic relations between our two countries, AmCham hopes that the U.S. and Vietnamese governments will take steps to begin talks on an eventual free trade agreement – multilateral or bilateral. This would be enormously important for Vietnamese and American companies alike.

In closing, we are proud that so many companies keep finding ways to support the local communities where we live and work. AmCham members have made humanitarian donations of PPE, food, and beverages for front-line workers; medical equipment, including an RNA/DNA extractor and a Realtime PCR system; and a fully equipped ambulance; as well as financial and other forms of support, and we are pleased to have assisted Vietnamese organizations on the front lines. We were deeply touched by the gift of masks from the government and people of Vietnam to the government and people of the United States. It is a great reminder that we can all do our part to help in these challenging times.

Thank you for this opportunity to speak this morning. We are looking towards a bright future in Vietnam and I wish good health, happiness and success to the leaders, distinguished guests, and our members here today.

**SPEECH OF KOREA CHAMBER OF COMMERCE IN VIETNAM
AT ANNUAL VBF WITH DEPUTY PRIME MINISTER PHAM BINH MINH
DATED DECEMBER 22ND , 2020**

*Presented by
Mr. Kim HanYong
Chairman*

Your Excellency Deputy Prime Minister Pham Binh Minh, and distinguished guests, Ladies and Gentlemen.

Today, I would like to talk about a few suggestions as a representative of Korean Business community in Vietnam.

First of all, I highly appreciate to the Vietnamese government for the supports shown to the Korean businesses especially for the special entry into Vietnam.

Recently, the two countries reached the agreement that businessmen who are planning a business trip to Vietnam for less than 14 days will be exempted from mandatory quarantine while following strict quarantine guidelines set by the Vietnamese authorities during their stay.

I strongly believe that this business-friendly action will be helpful to boost both the Korean and Vietnamese economy under the current COVID-19 situation.

I wish regular commercial flights between Vietnam and South Korea will resume in the very near future.

Secondly, I would like to raise some license issues regarding Korean investors.

I have heard some difficulties of Korean companies in applying for license in Vietnam.

Under COVID 19, the Vietnamese government has implemented various favorable policies to support companies to overcome the pandemic's economic situation.

However, licensing for some large Korean projects in Hanoi and Ho Chi Minh City have been delayed due to lack of clear legal instructions and this caused many difficulties in investment activities.

So we sincerely hope Prime Minister will understand this situation, and clarify guidance of regulations to local authorities.

This will lead local government to issue the license of the delayed projects in a very timely way.

Thirdly, I would like to suggest Vietnamese Government consider building nuclear power plants.

In order to support sustainable growth, a stable power supply is a critical matter for the Vietnamese

government to consider.

I came to know that the Ministry of Industry and Trade of Vietnam (MOIT) is currently preparing to develop Power Development Master Plan 8 (2021-2030) which is about a medium to long-term power supply plan.

Expanding of new and renewable energies, including solar power will be the top priority for the Vietnamese government, and we are all agree with this.

My understanding is that the essential need of this Master Plan is that the baseload power plants can produce power stably without interruption.

To this end, it is the very right time for the Vietnamese government to consider the development of Vietnam's nuclear power, which has previously been discontinued in the mid to long term plan.

I am confident that we will be able to cooperate with the Vietnamese government for stable power supply in the future since Korea has a lot of experience and know-hows in the production of nuclear power plants.

Thank you.



**POSITION PAPER OF KOREA CHAMBER OF BUSINESS IN VIETNAM
AT ANNUAL VIETNAM BUSINESS FORUM 2020**

1. Advance quarterly Corporate tax payments

Issue:

Current - Vietnamese corporate tax is supposed to be paid quarterly, and if the total amount of quarterly payment is less than 80% of the corporate tax amount after the final settlement is confirmed, an additional tax is imposed on the amount that is not paid.

However, the due date for the 4th quarter payment is by the end of January of the following year, so the final corporate tax amount must be calculated by the end of January in order to calculate the final corporate tax amount and calculate the 80% amount accordingly.

Therefore, the legally guaranteed settlement period until the end of March becomes ineffective and to avoid such additional tax, the amount needs to be settled by January, which is a very difficult situation in reality.

Recommendation:

Regarding the quarterly advance payment, improvement is required, such as not imposing additional tax when paying the amount reasonably adjusted in consideration of the sales performance of the quarter of the year based on 1/4 of the corporate tax paid in the previous year.

2. Related to imports of used machinery

2.1. Defining a production line

In regulation 18/2019/QĐ-TTg, "The production line is a system of machinery, equipment, tools and means that are installed and connected at a certain place without interruption in accordance with the designed technology and process to ensure production operation."

However, when trying to import machines to Vietnam, it is difficult to determine whether the imported goods fall under the 'production line' only by the above definition.

2.2. Production line import standards

The import standards for production line stipulated in these regulations are as follows.

- i. 85% or more of initial design efficiency
- ii. Energy/ raw material consumption less than 15% of initial design
- iii. It must be a technology used in more than three OECD member countries

Need to clarify the detailed method of proof of compliance with the above criteria.

3. Transfer pricing

Issue:

Current - A large number of Korean investment corporations operating in Vietnam are engaged in various forms of transactions with their parent companies. (Raw material purchases, sales, borrowing transactions, royalty transactions, etc.)

As the current Vietnamese regulation, it clarifies the range of the companies which should submit the Transfer price report is the one with the annual sales turnover of about \$ 2.24 million (VND 50 billion) or more, and the one with the especially related party transactions of about \$ 1.35 million (VND 30 billion) or more. It is a huge burden for companies that even small companies with such sales are also regulated subject to the transfer pricing documentation.

Also, if the Vietnamese tax authorities undergo an audit of transfer pricing and are subject to additional taxation, the issue of corporate tax paid by the Korean parent corporation in Korea and double taxation will arise. And In this regard, there is no method or system for SMEs to raise objections. Of course, there are grounds for raising objections in the law, but it is practically not easy for SMEs to take such a time-consuming and costly procedure.

Recommendation:

Therefore, the conditions subject to transfer pricing documentation should be eased first(the annual sales turnover of about 100billion VND or more, and the one with the especially related party transactions of about VND 60 billion or more), and secondly, a special review committee dedicated to transfer pricing (participating private experts such as tax offices and accounting firms) that can raise objections to transfer price taxation should be established to prevent SMEs receive unfair treatment.

4. It is necessary to standardize the customs inspection procedure for industrial waste for incineration.

Issue:

Current: Customs inspection procedures for discharging wastes is every 6 months or 1 year.
Problem: Unreasonable issues such as the need to leave industrial waste in the factory for a long time for customs inspection

Recommendation:

Improvement/proposal: Improve by having customs check every month then implementing incineration of industrial waste

5. Finding a plan to solve the factors of deteriorating working environment due to the flue gas from adjacent factories flowing into the company factory

Issue:

Current: The government has issued enforcement guidelines to equip environmental pollution prevention facilities to purify toxic fumes from flues in all industrial facilities.

Recommendation:

As there is no coercion, there are many cases of non-compliance with these guidelines, so it is necessary to execute mandatory improvement orders led by the Government Environment Agency

6. Proposal for the development of forklift / industrial truck manufacturing industry in Vietnam

Issue:

Currently: Customs duties must be paid when importing forklift parts for domestic sale (Min. 5% ~ Max. 25% / Average 15%). However, importing and selling finished forklifts is tariff-free / reverse discrimination for domestic manufacturers

Recommendation:

- It is necessary to reduce tariffs on imported parts for forklift production. Expand the scope of application of parts for forklift production (HS Code 8431.20) or extend the application of 0% tax rate for general parts for forklift manufacture.
- It is necessary to have systematic management standards for imported forklifts
 - Import tax on finished forklifts: Currently 0% / To be applied in the future (over 30%)
 - Includes Vietnam form of approval for imported forklifts (used and new)



SPEECH OF JAPANESE CHAMBER OF COMMERCE & INDUSTRY IN VIETNAM AT ANNUAL VIETNAM BUSINESS FORUM 2020

*Presented by
Mr. Tetsu Funayama
JCCI Representative*

We would like to express our sincere gratitude to the Vietnamese Government for your continued support, including the improvement of the business environment. Today, on behalf of JCCI, I would like to make a proposal regarding measures to promote FDI in Vietnam.

It is a well-known fact that the Vietnamese economy continues to grow even when the world economy is stagnant due to COVID-19. This is the result of the strong leadership of the Government. To further developing this growth trend, attracting more FDI is one of the keys.

Japanese companies that have expanded their business into Vietnam face challenges when they execute permitted investment or when establish a production plant. In addition, they are confused about "tax and labor" and concern about "energy infrastructure". Solving these issues will lead to the attraction of FDI not only from Japan but also from other countries.

To resolve these issues, we have two requests.

The first point is *"establishing a centralized window for investment projects"*. We would like to propose the Government to establish this window and respond to consultations from foreign companies in cooperation with each provincial government. The purpose of the establishment is for each foreign company to understand the procedures required for investment approval and execution, and the specific application of Laws before applying for investment, and to eliminate anxiety factors.

The second point is *"continuation of immigration support for business people and special measures for short-term business people entering Vietnam"*. With the support of the Government, about 3,000 Japanese people have entered Vietnam so far. These immigrants are mainly business people such as executives of companies who will stay in Vietnam for a long time. The reality is that the entry of short-term engineers required for production line construction, test runs, and pre-production measures is still limited. Please consider special measures for the entry of this short-term engineer.

In addition to these two requirements, in the long term, "cultivation of the material industry" and "fundamental solution of energy problems" will become indispensable issues in the manufacturing industry. In addition, it is expected that "realization of a securities/ financial market that is transparent and fair, and that is sufficiently open and efficiently managed externally" will be required.

In addition, the further implementation of "digital transformation", which has been suggested to determine the rise and fall of companies and businesses. This is also a very important theme when considering future international competition of Vietnam. Although there is a trade-off with national and corporate security policies, the realization of digital transformation ahead of other countries will bring more benefits to Vietnam. We would like to ask for support for foreign companies to contribute to Vietnam in these fields as well.

The leadership of the Government that immediately contained COVID-19, the implementation of measures to improve the business environment which will attract more FDI, and the efforts for digital transformation ahead of other countries, all of which will surely make Vietnam's economy even more dramatic.



POSITION PAPER OF JAPANESE CHAMBER OF COMMERCE & INDUSTRY IN VIETNAM AT ANNUAL VIETNAM BUSINESS FORUM 2020

Thanks to various types of support from the Vietnamese Government including the implementation of investment incentive schemes, the total approved investment amount from Japan in four years from 2017 to August 2020 reached USD 20.3 billion, making Japan the second largest country of FDI. On a single-year basis, Japan was the largest investor in 2017 and 2018.

In order to further expand investment from Japan (a high-ranked investor), to achieve a V-shaped recovery for the Vietnamese economy as well as to respond to the new normal of post Covid-19, we would like to illustrate some challenges, as well as to propose their solutions as follows.

1. Challenges in the establishment of a manufacturing and assembling base as the backbone of a global supply chain

1.1. Timing for the audit of production facilities related to the construction of large-scale factories

Challenges:

- Currently, the construction of a new factory with an area of 20,000m² or greater is classified as a Grade 1 project subject to the administration of the Ministry of Construction. Therefore, each factory and production facility is required to be audited and approved step by step.

After these two stages of approval, the enterprise can finally start adjusting their production line, including the adjustment of the yield rate in order to start the production of commercial products. However, due to the lengthy audit period of the production facility, it is difficult for enterprises to determine when to start production. This uncertainty of the timing increases the risk of investing in Vietnam.

Request:

- We would like to ask for the relaxation of regulations on the timing for the audit of production facilities related to the construction of large-scale factories as the adjustment of production lines can be started in parallel with the audit of production facilities.

1.2. Changing of approval period of tax incentives for large-scale investment

Challenges:

- In the existing policy, an enterprise can benefit from tax incentives by applying to the Vietnamese authorities for the investment project capitalized at VND 6 trillion or more and disbursed within three years. The Japanese enterprises may first make small and medium-scale investments and we will decide whether to proceed to a large-scale investment after monitoring the market reaction towards the initial investments. In that circumstance, we believe that the number of large-scale projects will increase if the authorities certificated the project, whose total amount of a series of investments exceeds VND 6 trillion, as a large-scale investment project.

Request:

- We would like the Vietnamese Government to admit applying the tax incentive in case that enterprises make a series of investment in the same field or make an additional investment and make a cumulative investment of more than VND 6 trillion in total amount.

1.3. Benefiting from tax incentives for Export Processing Enterprises

Challenges:

- Japanese enterprises are confronted with challenges related to the utilization of tax benefits for Export Processing Enterprises (EPEs).
- After the enforcement of Decree No. 82/2018/ND-CP, EPE licenses have not been granted unless an establishment of a factory is completed, and the taxes on land acquisition, factory construction and equipment importation, which should be exempted, become expenses for enterprises. There are several cases in which those expenses have become burdensome to enterprises who are entering the market in Vietnam.

Request:

- We would like to request for a written clarification that a part of the expenses associated with land acquisition, factory construction and equipment importation that enterprises had paid prior to the grant of the license shall be exempted when granting an EPE license. Furthermore, we strongly require that the EPE license shall be granted along with the application of IRC (Investment Registration Certificate) as it has been conventionally done.

1.4. Application of the tax incentives for the whole supply chain

Challenges:

- Many Japanese enterprises have expanded their business activities into Vietnam by utilizing the incentive scheme established by the Vietnamese Government. The establishment of additional incentive schemes seems to be the key to attracting the whole supply chain (including the supporting industries) of Japanese enterprises to relocate to Vietnam. In Japan, for example, there exist cooperative companies surrounding large enterprises, and there is a complicated and robust role division associated with production activities between large enterprises and their cooperative companies. It is thought that attracting not only large enterprises but also their cooperative companies (as a whole production system) will bring more value to Vietnam. By doing so, not only will large enterprises expand into Vietnam, but their cooperative companies will also be able to.

Request:

- Corporate tax incentives will be applied individually to each company by considering whether the preferential taxation system should be applied to each of a company's projects. However, if the investment is made for a high-tech industry, or if the investment amount exceeds a certain standard, we would like to require that all companies in the supply chain be granted unified corporate tax incentives.

1.5. Implementation of new preferential treatment

Challenges:

- When Japanese companies in Vietnam (such as automobile manufacturers) make investments in equipment for production plants, it is difficult to make investments in the equipment for production lines intended for the domestic market because the Vietnamese domestic market has not grown to such a scale that the amount of capital invested can be recovered.

- In regard to the attraction of manufacturing industries, the material industry (such as high-quality metals and plastics) has not grown in Vietnam. Even if Japanese companies develop their suppliers in Vietnam, most of those suppliers will disengage from trading with Japanese companies and transfer to trading with companies from other countries as soon as they reach to a certain level. The dependence on imported materials, therefore is increasing, making it difficult for the high value-added and high-quality material industry to grow in Vietnam.

Request:

- While waiting for the domestic market to grow, we would like the Vietnamese government to consider introducing financial subsidies and tax incentives for investment of equipment such as molds and jigs in order to promote the investment by automobile manufacturers.
- To attract Japanese companies that manufacture advanced products and to develop suppliers that can produce high value-added and high-quality materials in Vietnam, we would like the Vietnamese Government to consider introducing incentive regimes such as tax benefits for suppliers of high-value-added and high-quality materials and for companies that develop such suppliers.

2. PPP (Public Private Partnership) Law

Challenges:

- Vietnam's continued infrastructure development, including power generation, airports, roads, ports and even hospitals, is essential for sustainable economic growth beyond Vietnam's COVID-19 containment. On the other hand, as encountered in all emerging countries, there is a limitation in financing those infrastructure developments from only public investment and domestic private funds. In such circumstances, it is undeniable that the PPP approach which diverts overseas private funds to Vietnam's domestic infrastructure development and therefore reduces the burden on the national treasury becomes important.
- The method for financing a project is generally used for infrastructure development by this PPP scheme, and only the cash flow generated by the infrastructure business is positioned as the source of repayment. Therefore, when financing a huge amount of development funds, it is important how the quality of the business itself is secured.

Request:

- Ensuring bankability requires a balance of risk sharing between the host country and the business operators, ensuring of government guarantees in times of need, and the operation of highly transparent regulations. In particular, the following is still necessary for the participation from Japanese companies:
 - The government guarantee on the contract fulfillment such as the payments from state-owned enterprises to PPP operators,
 - Applying international laws without being limited to the Vietnamese laws as governing laws, and
 - Reconsidering the ensuring of foreign currency conversion, in which the guarantee scope is set within 30% of project revenue in Vietnamese currency (VND) after subtracting expenses.
- Even after the enforcement of the new PPP law in 2021, we would like to continue discussions with relevant ministries and agencies and members of the National Assembly

on securing of the above conditions through improvement of laws and regulations as well as achieving early application of flexible conditions for each project operation.

3. Improving the environment for promoting M&A (Law on Securities, Law on Management and Utilization of State Capital)

Challenges:

- Similar to Japan, insider trading is prohibited in the buying and selling of listed stocks under the Law on Securities of Vietnam. However, because of the abstractness of provisions of the Law on Securities, it is unclear how to determine what is considered to be insider information. On the other hand, in Vietnam, there have been almost no cases in which insider trading has been caught, and we have acknowledged that there are some Vietnamese listed companies that have little awareness of insider trading regulations in the first place. For this reason, when a Japanese company considers acquiring capital from a Vietnamese listed company, the handling of non-public information obtained through due diligence, etc. may become a bottleneck, and the capital acquisition may not be realized.
- Regarding the foreign investment in publicly listed companies, a foreign investment quota of up to 49% of capital is stipulated in the laws for many industries that meet the conditions set for the “conditional investment sectors” of the Law on Investment, which is stipulated in the government decree in relation with the Law on Securities. Regarding this point, the revision of the Government decree in 2015 made it possible for foreign investors to own 100% of capital in several industries. However, there are still investment restrictions in many industries, thus discouraging capitalization and investment from Japanese companies.
- Specific regulations regarding the privatization of state-owned enterprises are stipulated in the government decrees. However, from the perspective of international M&A standards, we think there is still much room for the revision of the stock price valuation method and divestment method when determining the sale value.

Request:

- We would like the Vietnamese Government to clarify the operational standards for insider trading restrictions related to trading of publicly listed companies’ shares. In particular, please clarify the operational standards for insider trading restrictions in circulars, etc.
- We also expect the relaxation of restrictions on “foreign ownership limits in publicly listed companies”. We hope that the new government decree currently being prepared will further expand the investment quota for foreign investors.
- We would like to request for the revision of the stock price valuation method and divestment method of state-owned enterprises’ stocks. For example, we hope to see improvements to the fact that open bidding is stipulated as a principle and that conducting due diligence is not clearly stipulated in law.

4. “Challenges on tax affairs”

Challenges:

- Consistency of legislative interpretation: Vietnam has tax incentives for supporting industries and high-tech industries. However, the targets and criteria for these incentives are not always clear and in some cases, different ministries, agencies and provincial governments have different interpretations. Preferential taxation may not be an incentive but a risk if there is a possibility of an ex post facto tax penalty by tax audit.

Request:

- In order to avoid this, we would like to ask the Vietnamese government to take measures to make existing tax incentives become more utilizable by issuing guidance to clarify the existing regulations.

Challenges:

- Target renewal: Vietnam offers preferential tax regimes to companies who hold high-tech licenses as incentives to attract manufacturing bases for advanced technology. However, subjects of incentive for companies with high-tech licenses are intended only for the technologies and products that were being applied at the time of application, and do not include new technologies and products, so they are not strong incentives for companies to introduce new advanced technologies and products.

Request:

- In particular, cutting-edge technologies and products have very short product cycles, and there are cases where the same models of smartphones employ completely different technologies and parts after 4 to 5 years. We therefore hope that Vietnamese Government will establish a regime that grants incentives for technology and product updates by the means of high-tech license re-examinations and extensions of exemption periods.

Challenges:

- Scope of taxation: Regarding taxation on transfer pricing, in the circumstance that companies with many related party transactions such as foreign-affiliated companies (including Japanese companies) are targeted, the increase of the permissible range for determining tax exemption from the first quartile (top 75% or higher) to the 35th percentile (top 65% or higher) was proposed. Whereas many other developed countries adopt the first quartile, the 35th percentile is a strict and disadvantageous regulation because it increases the possibility of unreasonable double taxation between the two countries.

Request:

- We ask for the keeping of the current first quartile in line with international practice.

Challenges:

- Obligation to prepare a country-by-country report for a subsidiary under the regime of transfer pricing taxation: The draft of the amended decree suggests a case where a subsidiary that is a Vietnamese body corporate is obliged to prepare a country-by-country report, but this is an unrealistic request and imposes an excessive burden and risk on the subsidiary.

Request:

- Since subsidiaries rarely have information on parent companies or subsidiaries in other countries, this provision unnecessarily increases the risk of investing and establishing a body corporate in Vietnam. We therefore request for its deletion.

Challenges:

- Prior confirmation system: The prior confirmation system in which Vietnamese authorities and authorities of other countries including Japan discuss to agree on the scope of taxation in advance does not function, thus increasing the management risk of Japanese companies in transfer pricing taxation.

Request:

- As a method to minimize transfer pricing tax risk, a prior confirmation system has been established between Vietnamese authorities and authorities from other countries including

Japan to discuss and agree on the scope in advance, but even now the final signer of Vietnamese side has not been decided, and the system has not been functioned. Therefore, we would like to ask for the improvement of the situation.

5. “Challenges on labor affairs”

Challenges:

- Issue on abolition of short-term employment: The revised Labor Law have abolished the classification of short-term employment and seasonal employment, which was previously stipulated. However, since short-term employment is one of the means to respond to production fluctuations, there is a concern that companies engaged in production activities in Vietnam will have difficulty in securing human resources due to the abolition of short-term employment, and unable to respond to current production fluctuations as well as the ones linked to overseas markets, and that will lead to a decline in competitiveness.

Request:

- We would like to request the Vietnamese Government to consider labor-related government ordinances that contribute to maintaining production activities and responding to market conditions, such as considering new employment categories as a means to respond to production fluctuations, and increasing the renewal frequency of employment contract instead of life-term employment.

Challenges:

- Issue with overtime-work regulation: The yearly overtime limit is usually 200 hours, and 300 hours in special cases, which is shorter than the usual 360 hours in Japan. It decreases the flexibility of companies' operation in Vietnam and leads them to be less internationally competitive.

Request:

- In order to increase flexibility, we would like the Vietnamese Government to admit the unnecessary of application for extension to 300 hours, and stipulate that the overtime exceeding 300 hours should be permitted within a labor-management agreement.

Challenges:

- Issue on process to determine the minimum wage: The ambiguous minimum wage determination process is one of the factors that increase the management risk of a company.

Request:

- The disclosure of the calculation standard makes it possible for companies to formulate a management plan with an outlook, and defining the scope of the minimum wage as the total amount of payment will lead to the reduction of management risk. Therefore, we would like to request for the transparent operation of minimum wage determination process.

Challenges:

- Issue on period and number of renewal of work permit for foreign workers: The revised Labor Law stipulates that the work permit for foreign workers is valid for two years and can be renewed once. If the reapplication for work permit is not accepted after four years when the first renewal expired, or if procedures such as one-time homecoming is required to reacquire it, administrative and technical instructions toward local companies will stagnant and corporate competitiveness may decline.

Request:

- We would like to ask formulating a government ordinance that clearly defines the procedure so that foreign worker can quickly obtain new work permit with a simple procedure even after the expiration date.

Challenges:

- Issue on recruitment procedures by foreign-owned organizations and individuals: A new Decree requesting the implementation of recruitment activities through an employment center approved by Ministry of Labour, War Invalids and Social Affairs, when hiring Vietnamese employees by companies or individuals with a foreign capital of 51% or more, is being drafted. If this amendment is approved, most of the foreign companies will need more time to hire, which may hinder their business activities.

Request:

- We would like the Vietnamese Government to keep allowing companies and individuals with a 51% or more foreign capital to directly hire Vietnamese workers.

6. Energy Infrastructure

6.1. Development of energy infrastructure for diversification of environment-friendly energy sources

Challenges:

- Due to the increase in power demand associated with economic growth, securement of electricity through rapid development of power generation and electricity grid has become an urgent issue. In order to secure energy including electricity, which is indispensable for economic and social development, in addition to the development of oil, natural gas and coal produced in domestic, which is considered to contribute to the development of domestic industry and economic infrastructure, a comprehensive mix of energy sources including energy imports is also increasingly necessary. In such circumstances, it is necessary to consider energy sources while taking into account the unique conditions of Vietnam, as well as to consider the environmental aspects that have been attracting attention in recent years.
- In term of environmental consideration, LNG and renewable energy have been attracting attention as energies with low environmental impact. However, there are issues of infrastructure development and institutional design for utilizing those sources.

Request:

- In order to utilize LNG, it is indispensable to develop infrastructure such as receiving and storage facilities for imported LNG, gas pipelines to utilization sites such as power plants, etc. Based on the master plan for the development of the gas industry (established in 2017), we would like to request the Vietnamese Government to promptly develop the infrastructure for this industry, as well as to understand the importance of securing bankability for the development of power generation projects using LNG, etc., as in the discussion of the PPP Law. The same request is also applied to the development of domestic resources.
- In regard of institutional design, we would like to strongly request for a stable regime so that overseas investors can easily develop their medium- to long-term investment plans, especially for renewable energies as follows:
 - The keeping and expansion of a more appropriate feed-in tariff mechanism;
 - The formulation of a more bankable electricity purchase contract;

- The speeding up and simplifying of procedures for adding projects to the Power Development Plan (PDP);
 - The granting of incentives to companies, factories and industrial zones introducing renewable energies; and
 - The further relaxation of regulations on the introduction of off-grid power sources.
- Coal-fired power generation remains an important base load power source in Vietnam. In addition to environmental measures such as the improvement of the efficiency of existing coal-fired power plants and the installment of additional environmental equipment, we would like Vietnamese Government to consider new construction of coal-fired power plants using leading-edge technologies as an important measure for securing stable and affordable electricity.

6.2. Granting incentives for energy-saving and environmental-friendly activities and products

Challenges:

- Not only the efforts by the power supply side but also the efforts by the power demand side are necessary to solve the issues on the energy supply at an early stage.

Request:

- We propose to give incentives to “energy-saving activities” in order to reduce unnecessary electricity demand and limit the effects of tight supply-demand balance of electricity.

Challenges:

- High CO₂ emissions and escalation of air pollution hinder the realization of a sustainable and efficient society in Vietnam.

Request:

- Promoting the spread of products with low environmental impact by granting incentives is one of the effective measures for decarbonization. For example, by granting incentives to electric vehicles and hybrid vehicles instead of conventional gasoline vehicles to support their widespread use, it can be expected to lead to decarbonization and elimination of air pollution.

7. Request for the Government in term of individual FDI

- In order to promote FDI of Japanese companies, we believe that it is extremely important for Japanese companies to inquire of and confirm with the Vietnamese Government in advance about the specific application of each law and regulation that may pose a problem when making investment such as: details of procedures required when executing individual investment project and specific application of preferential taxation regimes for each individual project.
- Regarding this matter, JCCI has already proposed the establishment of a prior inquiry system for the specific application of each law and regulation at VBF from 2017, with reference to the procedure for prior confirmation of application of laws and regulations of Japan (the Japanese version of a no-action letter system), and we would like to take this opportunity to request the Vietnamese Government to work toward its realization again. On that occasion, we would like to also request the Vietnamese Government to establish a general contact point for prior inquiries and consultations within the central government,

and secure and strengthen cooperation between the general contact point and each provincial authority.



POSITION PAPER FROM THE BRITISH CHAMBER OF COMMERCE VIETNAM AT ANNUAL VIETNAM BUSINESS FORUM 2020

The British Chamber of Commerce Vietnam (Britcham Vietnam) extend their greetings to the Chairs and Co-chairs of the Vietnam Business Forum, British Business Group Vietnam changed its name and brand this year to support the developing relationship between Vietnam and the UK on the 10th Anniversary of our countries Strategic Partnership.

The Chamber congratulates the Vietnamese Government and people on its success of controlling COVID-19, whilst continuing its growth and attractiveness to Foreign Direct Investment, as well as supporting the UK's request for official observation status with ASEAN and CPTPP during the British Foreign Secretary's and Minister of Trade Policy visit in September 2020, BritCham fully supports the Government on their progression to a more open and transparent business environment.

We would like to bring to the attention of the Government the following issues, which have been raised by our member companies.

1. UK-Vietnam Free Trade Agreement

On Friday, 11 December 2020, the UK Secretary of State for Trade Liz Truss and Vietnam's Minister Tran Tuan Anh from the Ministry of Industry and Trade, concluded the UK-Vietnam Free Trade Agreement (UKVNFTA) in Hanoi, with the witness of the two countries' leading businesses. The signing of the UKVNFTA provides essential continuity to the close trading relationship between the UK and Vietnam, transitioning the benefits from EU-Vietnam FTA into a UK-Vietnam bilateral agreement from 1 January 2021. In particular, the agreement provides opportunities to increase trade and support jobs and growth on both sides when it comes into force, through:

- Eliminating 65% of all tariffs at entry into force, increasing to 99% after seven years. This benefits UK exporters of machinery, pharmaceuticals, chemicals, spirits (including Scotch Whisky);
- Reducing regulatory barriers and cutting overlapping red tape;
- Ensuring protection of geographical indications;
- Opening up services and public procurement markets;
- Making sure the agreed rules are enforceable.

2. Border Control Issues - Short Term Business Travel - Experts and Business Owners stranded Overseas

Comment:

Many businesses operate with Vietnam-based executives that have reporting or management responsibilities in regional locations. Further, business executives based in regional locations have management responsibilities for their investments and activities in Vietnam. Additionally, significant capital projects in both the private and state sectors require technical experts to visit Vietnam for

matters such as complex machinery installation, where expert involvement is essential for warranty validity. The prolonged border closure has protected Vietnam from the worst impact of the global COVID pandemic, but is impacting business sentiment, the ability to conduct business in Vietnam, and the timely execution of capital projects. This is impacting Vietnam's economic growth and may become a competitive disadvantage for Vietnam as global travel restrictions ease.

Furthermore, many businesses are finding major challenges operating without key employees and families particularly those with children are finding it very damaging by this prolonged separation.

The Chamber acknowledges the work of the Government to support the International community in Vietnam, although there are still challenges with the process and flight schedules.

Businesses based here in Vietnam that have regional subsidiaries find the management of these other operations a challenge with quarantine requirements and uncertainty, therefore an ability for regional/international operations managed from Vietnam would benefit from a streamlined operation.

Recommendation:

We recommend prioritizing the establishment of safe travel “bubbles” or “air corridors” with regional financial centers that are important to Vietnam, particularly those with a good record in containing COVID such as Singapore, Thailand, Korea, Japan. Arrangement to allow short-term business travel and the entry into Vietnam of technical experts with a streamlined procedure (such as testing, shortened quarantine, and restrictions on domestic activities), combined with a streamlined application process including the approval of flights and removing direct approvals to specific flights on specific days because of the constant changes in flight schedules.

3. Certificate of Conformity (CoC)

Issue:

Vietnam does not presently accept CoC yet. Therefore, all batches of incoming cars are separately handled by the customs authority, including complicated and expensive homologation processes for emission and safety tests.

Comment:

If a factory has an approval by Certificate of Production (CoP) it should allow importers to have for 3 years import cars produced from this factory. The investigation of facilities by Vietnamese inspectors is not possible due to COVID. Therefore, importers can apply by documents for COP. But after 6 months inspection it should have been taken place. We do not expect COVID situation in the world will change in the coming months.

Recommendation:

Therefore, Britcham Vietnam recommend that the Certificates of Conformity should be accepted as standard for importing cars.

4. Renewable Energy

a. Extension of Feed-in-Tariff (FIT) for wind energy

Issue:

The current FIT for wind is due to expire on 1 Nov 2021, which leaves insufficient time for wind developers to get their projects operational by the time – 91 wind projects approved in July 2020 to be included in current Power Development Plan (PDP7) and still awaiting for licenses from MOIT.

Comment:

This does not provide sufficient lead-in time for the completion of new projects particularly offshore wind.

Recommendation:

We recommend that the FIT to be extended for at least 2 years, until 31 December 2023.

b. Feed-in-Tariff for solar

Issue:

The FIT extension from 30 Jun 2020 to 30 Dec 2020 is seen as insufficient by solar developers.

Comment:

FIT should have a longer expiry to enable developers to develop solar projects, particularly rooftop.

Recommendation:

We would request for the new FIT for solar to be announced in due course and with longer expiry.

5. Tax policy

Issue:

Tax policy where interest expenses that can be offset against CIT are capped based on 30% of EBITA if companies borrow \$1 or more from offshore or trade with related parties.

]

The idea of this tax was to reduce transfer pricing through interest payments.

Comment:

In coffee trading & export, this tax policy encourages companies to sell coffee immediately to companies offshore, while the coffee futures market can still cover the interest cost for keeping the coffee in Vietnam when in 'contango' structure.

It means export companies are missing out on trading gains as the gains are instead made by offshore entities where the trading book is located.

In addition, UK trading companies cannot trade with their local joint venture partners who are also coffee exporters, since they would then become liable for this tax. Before this tax was introduced, they had traded all the time with their JV partners whenever they had special qualities they needed.

Recommendation:

Britcham Vietnam recommend to cancel this cap on interest expenses for the coffee and other commodity trading sectors. It had good intentions but is not practical in the real world, or at least for coffee trading industry.

6. Education

Issue:

UK international schools are facing with a complex set of procedures to obtain license for establishing campuses. There are four levels of licensing: (1) land use; (2) permission to build; (3) building completion; and (4) permission to open the school. Different ministries and departments handle each these.

Comment:

The complexity of this process discourages investment in establishing international schools in Vietnam.

Recommendation:

We recommend that Ministry of Education and Training would collaborate with Ministry of Planning and Investment to provide a clear process for obtaining licenses, with time scales and a line of appeal.

7. Fintech

Issue:

The UK is recognized as a leading global Fintech hub. British companies are keen to expand investment into Fintech sector in Vietnam. A more enabling regulatory framework would create certainties for companies looking to access the Viet Nam market.

Comment:

Regulations for Fintech in Vietnam are still limited. Vietnam has not issued any official regulations or clear guidance for Fintech sector; this will limit investment and trigger hesitation from companies that want to access Vietnam market.

Recommendation:

We understand that SBV is drafting the Decree for Fintech, which is being consulted with many other line ministries and related agencies, so we expect this Decree will soon be report to the PM for approval.

8. Pharmaceutical

Issues:

Three interlinking challenges below causing delays in approval of drugs which will impact access to medicines, supply and export/import

a. Additional requirement for Certificate of Pharmaceutical Products (CPP)

An additional requirement in drug registration procedures stipulated in Circular 32/2018/TT-BYT that the CPP in the dossier must contain the sources of active ingredients of the finished product, which is not aligned with WHO CPP format. This places serious burden (administrative and financial) for businesses and other countries regulatory authorities/embassies including UK.

b. Validity of marketing authorisation (MA) for drugs/vaccines

As per new regulation, MA for drugs/vaccines with MA expiry date before 1 July 2020 cannot be extended for another 12 months while waiting for its 5-year extension granted. Therefore these drugs/vaccines can't not be exported into Vietnam and this causes supply disruption which would be especially detrimental during the Covid-19 pandemic.

c. Format for legal papers attached to the drug registration document

MOH requests that all legal papers should be legalised with wet signature and stamp. However, during to Covid, foreign authorities cannot issue this so it causes difficulties to companies.

Recommendation:

To ensure the continuity of drug supply, protect Vietnamese patients and reduce pressure on the healthcare sector during and post Covid-19, as well as to facilitate companies' production plans, we respectfully recommend the Government to urgently issue a Resolution to address the following:

- Put on hold the implementation of several provisions related to CPP additional requirements in Circular 32, which are causing difficulties in implementation, until the Circular is revised and supplemented.
- Maintain the validity of medicines' marketing authorizations (MAs) for an additional 12 months, applicable for MAs that expire from 01/07/2020 to 31/12/2021.
- To accept and apply the electronic format for legal papers attached to the registration documents

We hope our feedback with comments and recommendations as the aforementioned will draw the greatest attention from the Government and those will be fully addressed in a timely manner,

providing the best environment for British and Vietnamese businesses to further develop their relationships over the next 10 years of strategic partnership.

We would like to once again express our sincerest thank to the Government of Vietnam for the continuous support provided to the business community in Vietnam including UK businesses over the past years as well as our appreciation on their progression which has been made to a more open and transparent business environment.



**POSITION PAPER OF AUSTRALIAN CHAMBER OF COMMERCE
AT ANNUAL VIETNAM BUSINESS FORUM 2020**

*Prepared by
AusCham*

The government of Vietnam's response to the COVID-19 pandemic has been world leading, with elements including fast recognition of the pandemic's threat to people and the economy, public education programs, promotion of the use of facemasks, hand sanitisers, body temperature checks, and social distancing; with localised isolation and quarantining to contain outbreaks.

This has resulted in extremely low case numbers, and an exceptionally low number of deaths compared to other nations with similar populations, and certainly much better than in Australia.

However, as with all nations, the COVID-19 pandemic crisis presents a major challenge to Vietnam's economy, and to the businesses of Foreign Investors here.

Despite Vietnam's laudable performance in managing the pandemic from a public health perspective, the success in suppressing the healthcare crisis does not equate to Vietnam's ability to resist an economic downturn. According to the International Monetary Fund (IMF) forecast, weaker domestic and international demand is expected to slow economic growth in Vietnam significantly from 7% to around 2.7% in 2020.

Trade growth in Vietnam will also continue to slow as global growth slows and supply chains are disrupted.

Until markets open again, technological changes are positively disrupting production and distribution processes, and the COVID-19 pandemic has increased the importance of digital technology in business operations, highlighting the critical importance of building digital skills, and strengthening data privacy.

Australia is a strong FDI investor in Vietnam and there is a special relationship between the two countries with establishment of a Strategic Partnership between Australia and Vietnam. Australian companies, like other companies around the world at this time, are re-assessing, re-evaluating and re-thinking their operations both at home in Australia, and abroad. Many companies in Australia are struggling to survive and are becoming leaner, more focused and considering diversification of their supply chains, particularly to Asia including Vietnam.

However, some Australian firms, particularly those with strong financing, smart management, and advanced technological support, will take advantage of the situation and push forward with investment and development in Vietnam and neighbouring countries.

Many Australian companies see an opportunity to be in place and operating as the pandemic declines and business returns to the "new normal". AusCham continues to actively support Australian firms operating in Vietnam and welcomes those who wish to do business here.

Australian businesses in Vietnam have continued to operate, albeit at a reduced rate of production, and consequently reduced revenues. The business environment over the last 9 months has been one of survival and frugality with regard to investment and spending. Of course, some companies have needed to lay off staff, reduce salaries, utilise periods of extended leave, and generally reduce business activity levels.

However, we see light at the end of the tunnel. We expect that by mid-2021, there will be a business upturn, international markets will open and trade will return, of course with a new approach to business management, Global Supply Chain intervention, and international trade controls which will take into account the new normal environment living with COVID-19.

To ensure sustainable business in the long term, we see the need for safety protocols to be implemented not only for employees' health and safety, but also in materials handling, packaging, transport and logistics. The companies that will survive the pandemic and thrive into the next decade will adopt advanced technology management and control systems minimizing people intervention and using digitized automated handling, management and delivery systems. And there must be shortened or diversified supply chains to minimise the risk of disruption to supply. The lessons of severe and long-term disruption to Global Supply Chains through the COVID-19 pandemic must be learnt and avoided, in case of similar events in the future.

As Australia is heavily engaged in education in Vietnam, in universities, colleges and international schools, we are particularly concerned about how schools of the future will look. We are interested in how they are designed, built and operated to minimize contraction and transmission of disease, and to reduce the likelihood of infection in the future by teachers, parents and students. We are heavily represented on the Labour and Education and Training Group of the VBF.

Australian businesses are also strongly interested in the hospitality and tourism sector where the lack of international visitors in particular, has seriously affected operations. Reduction in levels of domestic travel and business travel are also concerning, and although domestic travel is currently supporting the hospitality and tourism sector, the ongoing effects on local trade have also affected businesses. Some operators have closed or reduced their services, some face financial difficulties or even bankruptcy. Hospitality and Tourism operators are awaiting the removal of travel restrictions, and the return to an environment where the foreign visitor in Vietnam is the norm, not the exception. Of course, the new normal for international travelers will see establishments continuing with disinfecting rooms, restaurants and facilities, personal temperature checks, use of face masks, hand sanitisers etc, to minimise the likelihood of disease infection and transmission, and to optimize traveler health and safety.

For Australian businesses operating in Vietnam, like all other Foreign invested enterprises, the challenges presented by the COVID-19 pandemic have been substantial and far-reaching. However, we believe the worst is likely behind us and we look to the future armed with the knowledge and experience of living and working in the pandemic environment.

During Australian Prime Minister Morrison's visit to Vietnam in August 2019, he and Prime Minister Phuc committed the two countries to a strong bilateral relationship and a Plan of Action for Strategic Partnership for the period 2020-2023.

In this context, mining is a clear candidate for such partnership, with Australia being one of the leading countries in the world for mining and processing innovation, technical excellence, safety and environmental sustainability, and Vietnam's mining industry on the other hand currently having to operate with "outdated technology and low levels of mechanization, poor

infrastructure, a large but low productivity workforce, excessive energy use, high safety risks, and unacceptable environmental pollution”, according to its leading state-owned mining enterprise.

The areas where mineral deposits are found tend to be the more remote, mountainous, and therefore usually the poorest socio-economic parts of a country, and this certainly applies to Vietnam. Modern sustainable mining in Vietnam would clearly meet two of the World Bank’s key objectives of its Country Partnership Framework in Vietnam which are to (a) deliver infrastructure and (b) broaden the economic participation of ethnic minorities in these remote areas.

Therefore, Australia can play an important role in helping Vietnam benefit from its rich, untapped mineral resources in an efficient, environmentally responsible, sustainable and safe manner, which would attract FDI and make a vital difference to Vietnam’s economic growth and reduction of national debt, particularly in the post-pandemic recovery period.

On a positive note, we are very pleased to report that together with RMIT University in Vietnam, AusCham Vietnam successfully arranged the return of Australian business people to Vietnam on a Bamboo Airways flight which arrived on 6 September. The passengers spent 14 days in quarantine on arrival at hotels in Ha Long City.



POSITION PAPER¹ OF INDIAN BUSINESS CHAMBER IN VIETNAM AT THE ANNUAL VIETNAM BUSINESS FORUM 2020

*Prepared by
InCham*

The Indian Business Chamber in Vietnam (InCham Hanoi) would like to express our sincere appreciation on the recent efforts made by the Government of Vietnam to further improve the investment and trade environment in Vietnam. As a matter of fact, we recognize enormous potential from Indian players to invest in Vietnam and accordingly, we would like to take this opportunity to bring to your kind attention to our comments on the key sector policies including the biggest FDI arena in power and energy area that may affect not only the Indian industry in Vietnam but also link with the overall foreign investment sector in Vietnam.

We look forward to receiving consideration from the Vietnamese Government on our suggestions divided into the following sections:

I. LIQUEFIED NATURAL GAS POWER (LNG)

Electricity demand in Vietnam is increasing by about 10 per cent per year, putting remarkable pressure on the power industry to ensure a stable supply for economic development and ensuring demand and supply balance in a value chain. At present, Vietnam's energy mix is reliant mainly on traditional sources such as hydroelectricity, thermal power which are on the verge of saturation and conventional sources like coal is discarded by the world due to its hazardous impact on the environment. Vietnam foresees to have a decent energy mix with clean power sources like renewables and the market seems upstream to consider liquefied natural gas (LNG) to enter into the sustainable energy mix of Vietnam as an effective alternative solution for coal. Though LNG is not a zero carbon footprint club holder but it is better than the worse in terms of comparison with thermal power sources.

1. Planning

In March 2016, the Revised Power Development Plan (**RPDP7**) was approved for the 2016-2030 period (it is under further revision and PDP8 is expected in 2020). Under RPDP7, gas thermal power, which includes normal gas thermal power, besides LNG power is targeted to achieve 44 billion kWh in 2020, 76 billion kWh in 2025 and 96 billion kWh in 2030. Total capacity of gas-fired power plants is targeted to reach 9 million kW in 2020, 15 million kW in 2025 and 19 million kW in 2030, respectively.

Besides, RPDP7 highlights the aim of developing the system of LNG warehouses and import ports in the province of Son My, Binh Thuan for the purpose of further providing gas facility with proper

¹ *Disclaimer: The content in this position paper is provided for advisory purposes only and do not constitute legal or other professional advice. While the information may be considered to be true and correct at the date of publication, changes in circumstances may impact the accuracy and validity of the information. INCHAM shall not bear any liability arising from the use of the information contained herein.*

terminals for different power centers such as Phu My and Nhon Trach which happen to be the ice cracker in LNG power generation.

2. Forms of investment

As a matter of laws and practice in Vietnam, large power projects and excluding renewable power projects are normally developed on (i) an independent power producer (**IPP**); or (ii) a public-private partnership (**PPP**) investment project (the new PPP law restricts GGU to a larger extent and limits currency convertibility to 30% which is impractical from business perspective), commonly in the form of a build-operate-transfer (**BOT**) one. An IPP project is wholly funded by the private party without using any capital from state budget meanwhile a PPP project is based on the cooperation between a State party and a private party. As compared to an IPP project, BOT mechanism is preferred for its distinct characteristics providing for security through various guarantees and incentives from the government. In other words, the government is traditionally witnessed to grant a Government Guarantee and Undertaking (**GGU**) to the investors and the project company of BOT power projects, mainly including (i) material supply; (ii) off-take of products; (iii) all payment obligations and all financial commitments; and (iv) right to conversion of payment by Vietnam Electricity (**EVN**) from Vietnamese Dong to US Dollars and foreign remittance of US Dollars.

3. Investment Incentives

LNG Power plant project invested in the form of PPP with total investment capital of more than 2,300 billion VND (approx. US\$100,000,000) is qualified for investment incentives. The investor shall enjoy different investment incentives, which can be briefly illustrated as follows:

- **Corporate Income Tax:** 10% for 15 years, extendable to up to 15 years with the Prime Minister of the government of Vietnam (the “**PM**”) approval. Besides, investor shall enjoy exemption for the first 4 years and 50% reduction in the subsequent 9 years;
- **Import Duty:** LNG Project is exempted from import Duty on goods imported to create fixed assets of the project;
- **Land Rental:** LNG is entitled to land use fee/rental incentives at par with a project in the preferential investment sectors. Subject to the location of the project, it may also be exempted from land use fee/land rental for a period ranging from 03 to 15 years or for the whole term.

In case LNG Power plant project is invested in the form of IPP, such IPP shall only enjoy the same investment incentive as above if such project has a total investment capital of more than 5,000 billion VND (approx. US\$217,000,000), which requires approval from the PM.

4. Power Purchase Agreement (PPA)

LNG power project does not have a specific model PPA like solar or wind power projects and stands quite open for negotiation to have a PPA that can catch up with international standards. However, in accordance with Article 1.2(a) of Circular 56/2014/TT-BCT of the Ministry of Industry and Trade (**MoIT**) the template PPA incorporated in the said circular is applicable to LNG power project. Circular 56 does not apply to IPP project in form of BOT. The template PPA under Circular 56 has been witnessed some notable points, including:

- **Off-take:** Under the template PPA, EVN or its authorized subsidiary that takes over all rights and obligations of EVN in accordance with the laws acting as the power purchaser has the responsibility to off-take the entire electricity output generated to the grid by the relevant LNG power project. The concern may be raised by investors as to EVN-authorized subsidiary which

serves as the Buyer, i.e. whether EVN shall be liable for any breach or failure of the authorized subsidiary in performing the PPA signed with the project company.

- **Contract price:** A calculating formula is mainly based on 4 factors i.e. yearly-fixed cost, monthly-fixed for operation and maintenance in month, monthly-variable cost, and main fuel transportation cost. Adopting pricing formulas that allow LNG price fluctuations to automatically feed through into electricity tariffs on a regular basis without any need for regulatory intervention is an effective way to mitigate financial risk for the investor in case of an increase in LNG price.
- **Grid-connection and metering system:** The power seller remains responsible for building and maintaining the interconnection facilities under the template PPA. However, the template PPA has not addressed the scenarios where the power plant is prevented from generating electricity due to unavailability or other risks associated to the grid.
- **Events affecting the implementation of the PPA:** The template PPA provides only three events (not including other events) affecting the implementation of the PPA comprising (i) events relating to dissolution and bankruptcy of both parties, (ii) material breach of the PPA not cured within 90 days from notice date and (iii) operation suspended by decision of a competent state agency.
- **Step-in rights:** Step-in rights are critical to the lenders' and allow them to preserve essential contracts entered into by the project company in the event of default by such project company. For PPP project, as a matter of established practice lenders' rights are well negotiated. However, for IPP project, the step-in rights can be negotiated as well.
- **Change in law:** Vietnam has ensured stable investment atmosphere since many years but the laws and regulations keep on changing from time to time based on the development planning and needs of the country which poses a risk for the investors who are investing on a long term basis like in LNG power. Nevertheless, the template PPA does not specifically address risks of change in law (including change in interpretation and application of law). Although, the Law on Investment 2014 provides protection to the investor and the project company in event of change in laws or policies, during the PPA negotiation the parties may consider basing their contention on the said law to have a better bankable PPA.

5. LNG importation

Gas has an important role in Vietnam's future energy landscape, with LNG importation now being key feature of Vietnam's energy policy. As per the master plan on development of Vietnam's gas industry to year 2025, with the outlook upto 2035, development of the gas industry is based on the principle of cost effective and reasonable use of domestic natural resources; on developing the import of LNG in parallel with exploiting new domestic gas sources to supplement diminishing gas sources in order to maintain unhindered capacity to supply gas to consumers.

An importer of LNG must satisfy all conditions under Article 6 of Decree 87/2018/ND-CP of the government, including: (i) being a company incorporated in accordance with laws of Vietnam; (ii) owning or having a wharf lease agreement with a lease term of minimum 5 years, and these wharves must be included within the Vietnamese port network/system; (iii) owning gas tank or having a gas tank lease agreement which meets all safety regulations; (iv) satisfying conditions for fire prevention and fighting; and (v) having gas storage or a contract for leasing gas storage satisfying all the conditions for circulation on the market by business entities exporting and importing gas and trading stored gas. If business entities import LNG via pipelines, in addition to

satisfaction of the conditions prescribed in (i), (ii) and (iii) above, they must have gas transporting pipelines and gas supply stations which satisfy all conditions for safety, and fire prevention and fighting. The importer shall be issued with a certificate for business entity importing LNG upon fulfillment of all required conditions mentioned above.

6. Comments and suggestions

Besides the advantages such as huge power consumption, increasingly supportive government rhetoric for promoting greater gas use, cheap labor cost, etc., foreign investors diving into LNG power sector in Vietnam may face lots of challenges including: (i) high LNG investment cost; (ii) the developing regulatory framework for LNG-to-power in Vietnam may bring in uncertainties; (iii) dealing with state-owned enterprises is an arduous task sometimes due to their way of functioning and limited exposure for the investor to do due diligence; and (iv) Vietnam does not have enough domestic gas resources and it has to import fuel to run LNG power plants i.e. adding up to costs.

The regulatory framework in Vietnam on LNG sector needs to be refreshed to support better investment opportunities for foreign investors. Furthermore, Vietnam needs to maintain a balance between economic goals and energy security so that Vietnam does not face power shortage in the future while at the same time as a matter of economic independence for the country it is advisable for a sovereign nation to build ample reserves of LNG in Vietnam and avoid basing its power generation model that depend majorly on imported fuel. Better policies can provide the comfort to the investors to establish LNG storage facilities in Vietnam and the country will benefit by having ample fuel on its ground to suffice for its energy needs in the future.

II. ZERO CARBON POWER – NUCLEAR ENERGY USING ATOMS FOR PEACE

Vietnam began to consider nuclear power as an option for energy supply in the 1980s to address its increasing energy needs. Accordingly, it appears that Vietnam has made its effort in developing the national legal system in order to synchronize with international safety standards promulgated by the International Atomic Energy Agency (**IAEA**).

1. Vietnamese legal framework on atomic energy

On 3rd June 2008, the Law No. 18/2008/QH12 on Atomic Energy (**Law on Atomic Energy**) was adopted by the National Assembly and took effect in 2009 and the government of Vietnam has also passed relevant Decrees guiding the said law. The Law on Atomic Energy governs all activities in the field of atomic energy including promoting activities and the assurance of safety and security for those activities. It applies to Vietnamese organizations and individuals, overseas Vietnamese individuals, foreign individuals and international organizations who conduct activities in the field of atomic energy in Vietnam.

Under the Vietnamese laws, the current licensing system is complicated, specifically: The PM is responsible for site and feasibility study approval, the Ministry of Science and Technology (**MoST**) is responsible for technical permit review and the MoIT is responsible for operation licenses etc. MoST/Vietnam Agency for Radiation and Nuclear Safety (**VARANS**) is responsible for safety assessment of Safety Analysis Report at all stages of nuclear power plants development. The Ministry of Natural Resources and Environment (**MoNRE**) is responsible for assessment of environmental impact assessment report, the Ministry of Construction (**MoC**) is responsible for reviewing disposal and storage of radioactive waste. This could cause complication in managing the licensing system as a whole and random authorities may lack expertise in such highly advanced sector.

In order to resolve this issue, the government of Vietnam decided to amend the Law on Atomic Energy. However, it is also recognized that amendment on unifying regulatory activities would be feasible only if VARANS capacity as well as its technical support organization be sufficiently strong. Under the Decision No. 446/QĐ-TTg dated 7th April 2010, the National Council for Nuclear Safety was established with the functions of advising the PM on policies and measures to assure nuclear safety in the use of atomic energy, in the course of operation of nuclear power plants as well as measures to remedy particularly serious nuclear incidents; examining and evaluating safety reports of nuclear power plants and results of assessment by the radiation and nuclear safety agency.

It appears that the Law on Atomic Energy has involved the public in the licensing process. According to Article 47 of the Law on Atomic Energy, the decision of site approval for nuclear power plants shall take into account the resolution of the provincial People's Council of the province where the nuclear power plant is planned to be located, stating local people's opinions/views on measures to assure safety and security, policies on investment in technical infrastructure construction, development of culture, education and social welfare in order to ensure the harmonization of the interests of the State, the investors and local people's benefits.

Otherwise, in order to prevent the operation of a nuclear installation without a valid license, the Law on Atomic Energy has strictly prohibited the operation of radiation facilities, radiation activities or nuclear installations without a valid license.

2. International agreement on atomic energy of Vietnam

With the acknowledgement of the importance of international cooperation, especially the contribution of international regimes, in achieving and maintaining a high level of safety, Vietnam has been a party to a number of international instruments, including:

- Treaty on Non-Proliferation of Nuclear Weapons (1982);
- Safeguards Agreement (1990);
- Convention on Early Notification of Nuclear Accident (1987);
- Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency (1987);
- Comprehensive Test Ban Treaty (2006);
- The Treaty South East Asia Free Zone of Nuclear Weapons (1997);
- Regional Cooperative Agreements;
- Additional Protocol to the Safeguards Agreement (signed in 2007);
- Convention on Nuclear Safety (4/2010);
- Convention on Physical Protection of Nuclear material and Its Amendment (2012);
- Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management (9/2013);
- International Convention on the Suppression of Acts of Nuclear Terrorism (signed by the President on 14 July 2016);
- Vienna Convention on Liability for Nuclear Damage and its Protocols (2016-2017).

3. Practical issues and suggestions

Vietnam became a contracting party to the Convention on Nuclear Safety on 15 July 2010. By definition in the said convention, Vietnam has no civil nuclear installations. Vietnam has a research reactor of 500 kW (DNRR), located in the City of Da Lat, Lam Dong Province, operating since 1983. For the safety and security purpose, several projects have been recently implemented,

including HEU-LEU core conversion, I&C upgrade, under the supervision of VARANS through assessing SAR submitted for licensing and verifying during inspection activities. The ageing issue is adequately monitored and addressed.

Vietnam had prepared to build the first two nuclear power plants (**NPP**) in Ninh Thuan Province to address its increasing demand of energy. Site study and on-site investigation activities have been done at both NPP No.1 and NPP No.2. during conducting study and investigation activities, the National Nuclear Safety Council and VARANS sent experts to the sites. Recommendations and questions were raised and taken into account by the Project owner to improve the results of site investigation. However, the development and completion of a legal document on nuclear safety is a challenge as nuclear safety is a rather new area for Vietnam while there is a big shortage of human resources in the fields of physics, nuclear technology, hydrothermal, materials and others but can be a future feasible option for the Vietnamese Government to consider from an environmental perspective by being a leader in zero carbon energy.

Vietnam launched 20 national and 48 regional or inter-regional projects funded by the IAEA during 2014-2019. For the 2020-2021 period, five new projects have got approval from the IAEA. In late 2018, the Vietnam Atomic Energy Institute and the IAEA inked an agreement on setting up a cooperation center using nuclear technology for the management of water resources and the environment in Vietnam and coastal areas in Southeast Asia.

Otherwise, due to the inadequacy of the Law on Atomic Energy, especially in connection with the independence of the regulatory body, nuclear power plants licensing issues, emergency response, etc., the government had decided to amend the law.

The major hurdle in any developing country related to nuclear power development is lack of correct knowledge and awareness regarding nuclear power. Every technology comes with risks and likewise nuclear material if used for right purpose can benefit the country as well as world at large by sustaining the environment with the most stable and green source of energy that mankind has invented.

It was expected that the draft of amended Law will be submitted to the National Assembly for approval in 2018. In order to assist the revision, 2 expert missions to Hanoi were conducted by OLA, IAEA in March 2012 and May 2013 and 2 consultant missions have been carried out with the participation of high level officials from the National Assembly' Office, the Government Office, the Ministry of Justice (**MoJ**), MoST, etc. The main issues that were revised include: the independence of the regulatory body, unification in licensing process, emergency response and preparedness, liability for nuclear damage, etc. It is noted that Vietnam is expected not to reconsider nuclear energy under PDP8 from futuristic vision but Vietnam needs to buckle up with raising energy concerns in the region and pay close consideration on effective use of nuclear technology for civil purposes by generating green energy at an extremely low cost which no other power generation option can provide. Nuclear power can also be considered as a strategic move by the country to maintain its investment security with power generating strength in the region. India has been a leader in nuclear power industry in Asia and Vietnam can benefit from India's over two decades of experience in nuclear power generation sector. Vietnam and India are comprehensive strategic partners and have a long history of mutual alliance which creates a robust bond between the nations. Also, our friends like U.S.A, Japan, South Korea and countries from Europe can see an opportunity together with India to support Vietnam's constant growth at the global fora with zero carbon footprints.

III. SOLAR POWER

Solar power market in Vietnam has witnessed a rapid growth and significant investment potential in the recent years. In light of the recent attempts to boost the solar power development from the government of Vietnam, MoIT had issued Circular No. 18/2020/TT-BCT (“**Circular 18**”) dated 17 July 2020 on project development and attaching standard form of power purchase agreements (“**Model PPA**”) applicable to ground based, floating and rooftop solar power projects.

The new Circular 18 provides detailed guidance for the implementation of Decision 13/2020/QD-TTg dated 06 April 2020 of the PM on incentives for development of solar energy in Vietnam (“**Decision 13**”). Circular 18 further aims to fill the gaps of earlier Circular No. 16/2017/TT-BCT dated 12 September 2017 (“**Circular 16**”).

Comments and suggestions

Transitional provision under Circular 18 permits the grid-connected solar power projects which in part or full have achieved COD before 1st July 2019 to follow their signed power purchase agreements (i.e. by 30th June 2019 being the date on which the past Decision 11/2017/QD-TTg on FiT mechanism for solar power projects issued by the PM expired and its successor Decision 13 was promulgated in April, 2020).

In the cases where grid-connected solar power projects (including a part or the whole project) and rooftop solar power system, which have their power purchase agreements signed and are put into commercial operation during the period from 30th June 2019 to the effective date of Circular 18 (i.e. 31st August 2020), the power purchaser and the power seller are required to re-sign or amend, supplement the existing power purchase agreement in accordance with the Model PPA.

We can see a loophole under Circular 18 and note that it fails to address the scenario where a grid-connected solar power project signed the power purchase agreement in accordance with the terms of Circular 16 but had not achieved commercial operation date (**COD**) before 31st August 2020, the transitional provisions under Article 9 of Circular 18 has not expressly dealt with such situation where the power purchase agreement was signed before 30th June 2019 however, the COD is expected to be achieved post 31st August 2020. MoIT may consider brainstorming on this matter to clear the air from policy perspective and issue a guidance to extinguish any possible ambiguity opening doors for interpretation on a case-to-case basis at the provincial levels.

IV. LEGAL AND TAX

We note that the draft Decree providing guidance of Law on Tax Administration No. 38/2019/QH14, there is a provision on the effectiveness of the Bilateral Advance Pricing Agreement (“**APA**”), according to which the APA only comes into effect from the tax period following the year the APA is concluded. Specifically, according to Article 41.7: “*the effectiveness of APA shall be counted from the tax period immediately following the tax period in which the APA is duly concluded.*”

Comments and suggestions

1. Vietnam's regulation on the effective period of the APA is inconsistent with the APA regulations in other countries and may lead to double taxation on foreign enterprises in Vietnam. This contradicts Double Taxation Avoidance agreements (“**DTAA**”) that Vietnam signed with other countries.

In particular, most countries, including countries in Asia, Americas and Europe stipulate that the effective date of the APA is from the year of filing the APA application. Many countries allow an extension of the term for previous years.

The concerned provision in the draft Decree will create a significant gap in the effective period of the APA between the two countries. If in Vietnam the APA application comes into effect after being signed, there will be a common case that the APA is effective in the counterparty country but not yet in Vietnam, and when it comes into effect in Vietnam, it will expire in the counterparty country. As the result, the APA will be effectively invalid even though it is signed, and thus double taxation issues will not be mitigated, i.e. companies may be required to pay tax in Vietnam and in the counter country for the same income.

2. Vietnam's regulation on the effective period of the APA is inconsistent with international practices recommended by the OECD and will negatively affect Vietnam's foreign investment environment.

Vietnam officially joined the Forum of Implementation and Measures to counter BEPS in July 2017. By participating in the Forum of Implementation and Measures to counter BEPS, Vietnam has committed to implementing at least four (4) actions in the overall solution package of fifteen (15) actions to prevent BEPS (including Action No. 14 - Making Dispute Resolution Mechanisms More Effective). In agenda for Action No. 14, the minimum requirement for the participating countries is that countries should have a mechanism to reduce and promptly settle disputes, whereby point 2.7 clearly states the countries that are taking part in Bilateral APA “should” allow rollback in appropriate circumstances.

“2.7. Countries with bilateral advance pricing agreement (“APA”) programmes should provide for the roll-back of APAs in appropriate cases, subject to the applicable time limits (such as statutes of limitation for assessment) where the relevant facts and circumstances in the earlier tax years are the same and subject to the verification of these facts and circumstances on audit.”²

Implementation of the APA regulations that are not in accordance with international practice and the recommendation of the OECD will negatively affect the reputation of Vietnam with foreign investors. The current regulations under Circular 201/2013/TT-BTC (“**Circular 201**”) are consistent with international practices, and a change in the opposite direction like this will make foreign investors questioning the policy stability in Vietnam. Therefore, considering that Vietnam's current draft provisions on the APA effective period partly contradict with the encouragement of international investment, it will raise concerns for foreign investors. We hope that the draft Decree will be carefully considered with the aim of improving the efficiency of the legal environment, contributing to strengthening the confidence of foreign investors in Vietnam.

3. Processing the applications submitted before the effective date of this Decree lacks clarity.

Currently, there are many foreign enterprises that have submitted official APA applications in accordance with Circular 201. However, there is lack of guidance on how to process these applications. Therefore, we suggest adding a separate provision providing guidance on handling applications that were already submitted before the effective date of the Law on Tax

² [Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report issued by the OECD](#)

Administration in the draft Decree, to strengthen investors' confidence in stability and transparency of the Vietnamese Laws.

V. CONCLUDING REMARKS

As the representative of Indian firms in Vietnam, we are industriously facilitating firms and assisting them gain more access to the Vietnamese market. A number of online business workshops and meetings have been held throughout the year and this has long become a tradition for the Indian Business Chamber in Vietnam. We will continue to thrive for excellence to support Vietnam in its journey and aim to have positive outcomes in the coming time.

II. SECTION 2

POSITION PAPERS OF WORKING GROUPS

SUSTAINABLE ENERGY SECURITY ATTRACTING PRIVATE INVESTMENTS

*Prepared by
Power & Energy Working Group*

On behalf of the Power and Energy Working Group (PEWG) - Vietnam Business Forum (VBF), we would like to take this opportunity to congratulate the Government for the successful launching of Resolution No. 55-NQ/TW dated February 11 on the “Orientation of Vietnam’s National Energy Development Strategy to 2030, with a Vision to 2045” (Resolution 55) and the National Energy Summit of July 22, 2020. With new, strong and breakthrough provisions on national energy development, Resolution 55 continues to open up enormous opportunities for the private sector to participate in energy development. Resolution 55 has opened doors for the private sector through new policy mechanisms, including a framework to guide energy development and security and policies to encourage the mobilization of private sector financial resources. We have seen a positive interest by international financing from Banks, ECA’s and private sector multinational’s like IFC in solar and more recently in LNG.

Based on consultations with business leaders and a careful review of national and international trends, PEWG proposes the following recommendations that would improve the sustainability, reliability and affordability of Vietnam’s energy system

Prioritize renewable energy in national power planning

Vietnam can achieve its commitments to reduce greenhouse gas emissions under the 2015 Paris Agreement through the application of appropriate and timely policies. We recommend that MOIT increases the share of electricity from renewable energy sources such as solar and wind in the National Power Development Plan as a means of reducing dependence on fossil fuels while also investigating a range of carbon taxation policies, including taxation at the source, border adjustment taxes on untaxed fossil fuels, carbon pricing for high carbon industries and sectors, and carbon trading mechanisms. This combination of policies will help Vietnam to both meet and exceed its emission reduction targets and avoid punitive border adjustment taxes on the embodied carbon in Vietnamese exports. In addition, revenue from carbon taxes can be used to fund research and incentives to support Vietnam’s transition to a low carbon economy. We agree these projects should not be based on subsidy but on a real cost and tariffs.

Increase use of natural gas as the current best-fit baseload for renewable energy

MVEP recommends tax levelization for the development of certified domestic offshore gas and the importation of LNG as the current best fit baseload for renewable energy. Gas-fired electricity can easily scale to the size necessary to meet the significant demands of Vietnam and can respond to intermittent load fluctuations and outages more rapidly than coal. Incorporating imported LNG supply into the energy-mix adds to Vietnam’s energy capacity while long-term supply contracts for domestic offshore gas are developed.

Construct a regulatory and permitting environment that attracts private sector investment in clean energy generation and energy efficiency

PPA: MVEP 2.0 recommends that the standard Power Purchase Agreement (PPA) for wind, solar and gas energy projects be made internationally bankable by establishing Feed-in Tariffs (FITs) well in advance and reducing regulatory hurdles. We strongly urge transparency regarding any changes to FITs and encourage discussion on how to navigate the permitting process of master

plan approval. Ultimately, these efforts should lead to a decline in investor risk and the ability to decrease FITs as projects become simpler and more profitable.

DPPA: MVEP 2.0 recommends Direct Power Purchase Agreement regulations that promote access to clean energy for end users from local power generation and storage. DPPAs can accelerate renewable energy development between buyer and seller and relieve pressure on EVN. We encourage the government to seize the benefits of facilitating easy investment in *behind-the-meter* solar, battery, biomass, and waste-to-energy plants developed by power consumers and specialist suppliers. This will require an increase in the limits placed on generation *behind-the-meter* to 30 MW to fully capture the benefits of renewable energy, especially within Vietnam's many industrial zones. Supportive regulation will help to develop a dynamic market while preserving a safe and reliable power supply.

TARIFFS: The PEWG recommends EVN to retain current subsidies for low energy users but that the Government issues a roadmap for market pricing of all other tariff rates. We believe that market pricing, gradually introduced, will encourage consumers to use electricity more economically and that by issuing a roadmap for price increases, consumers, including those in the industrial sector, will have time to invest in technology solutions for energy saving and energy efficiency, especially if the roadmap is accompanied with incentives for investment in energy efficient capital assets. To compliment the roadmap, it is also important to have a promotional campaign aimed to educate stakeholders on the need for, and benefits of, energy efficiency.

Extend the FIT deadline for wind and solar power developers under Decision 13 and Decision 39

Policy for solar power projects, rooftop solar systems and wind power projects should be made on a long-term and sustainable basis with consideration of the global ongoing Covid-19 pandemic. Accordingly, the Government should consider:

1. Extend the FiT deadline by at least 6 months, or preferably 12 months, beyond the current deadline of December 31, 2020 for both solar farms and rooftop solar systems.
2. Extend the onshore FIT for six-months, followed by a viable new FIT for onshore wind projects grid-connected by the end of 2023; and a two-year extension to the current offshore wind FIT to the end of 2023.
3. Provide a FiT for grid connected battery storage, especially grid connected solar and battery combinations, to improve grid stability and reduce curtailment of solar energy during peak generation hours.

Construct a regulatory and permitting environment that attracts smaller scale off-grid investment in clean energy generation and energy efficiency

ROOFTOP: VBF recommended that the exemption from the requirement to obtain a Power Operation License should be increased from 1MW to 3MW. VBF continues to recommend that MOIT considers increasing the exemption to 3MW to fully capture the benefits of investment in solar rooftop energy systems. In addition, Vietnam should retain incentives in Decision 13 to motivate different economic sectors to develop solar energy in Vietnam. MOIT should also promulgate clearer regulations for determining what qualifies as RSS to facilitate uniform application when determining electricity purchase prices. More specifically, the below-mentioned types of projects that have already been implemented and are not contrary to Decision 13 should be recognized as RSS:

1. Projects that have capacity up to 1.0 MW in land based or rooftop applications in which solar power generation and agricultural production are combined;
2. Projects that have capacity up to 1.0 MW, with up to a 35kV grid connection, with solar panels mounted on a bracket system, partially installed on a roof, with other parts on the ground;
3. Projects that are installed on the roof of a factory in an industrial park, buying electricity from EVN and selling electricity to EVN's grid via the 22/110 kV transformer.

BEHIND-THE-METER: VBF recommends that behind the meter clean energy power generation, that exports no power to the EVN grid are:

1. Exempted from the need to obtain an Operating License up to 30MW capacity
2. Not required to seek approval in the National Energy Development Masterplan
3. Required to give EVN reasonable notice of when the power plant is to be commissioned
4. Simplify and clarify the process of licensing & approving onsite/Behind-the-Meter Power Plants of 1-50MW

EFFICIENCY: For the achievement of sustainable energy development, VBF recommends to:

1. Improve the enforcement of the Law on Economical and Efficient Use of Energy by accelerating the amendments and supplements to Decree No. 21/2011/ND-CP
2. Build capacity for regulatory compliance by allocating necessary financial and human resources to law enforcement.
3. Better communications for behavioral change. The government should work with the private sector to develop more effective means of communicating the value of energy efficiency.
4. Develop funding sources that incorporates mobilization from donors for VNEEP3 implementation and accelerate the establishment of a fund to promote economical and efficient use of energy to create a capital market for energy saving activities as well as disburse funding for the Program's implementation at central and local levels.

Invest in grid infrastructure to improve stability and capacity

As renewable and natural gas energy sources grow in contribution to the grid, there are challenges associated with incorporating more decentralized power plants that provide intermittent power supply. Given the surging increase in solar and wind generation, especially in the southern region, there is an urgent need for investment to strengthen and expand the transmission and distribution network. Further, there are likely opportunities to include and leverage private sector and international donor expertise in the area of renewable energy grid integration, battery storage, and flexibility.

Specific policies on waste solar panels towards material recycle and reducing emissions into the environment

The solar panels after their expiry date should be collected and recycled to reduce waste and impacts on the environment. To do this, we recommend MOIT to have specific regulations and policies on waste solar panels such as:

1. Regulate the responsibility for collection and treatment to the producer instead of only assigning this responsibility to the investor (the electricity seller) according to Circular 18/2020/TT-BCT;
2. Consider allowing the seller to charge for the cost of waste disposal as an input cost;
3. Establish technology requirements to treat wastes from the project in the basic design dossier.

These proposed regulatory actions will aid both the Vietnamese and Foreign Private Sector to mobilize their Expertise, Technology and Financial Capacity to assist the Party and State in building an affordable, reliable, sustainable and secure energy system. More specifically, it will lead to:

- Enhanced energy security from the inclusion of natural gas, energy efficiency and renewable generation within the energy system. Redundancy and diversification are key to energy system security and resilience.
- Reduced power system costs relative to a coal-focused energy plan by limiting vulnerability to volatile coal markets, avoiding the financial liabilities of stranded assets, and reducing costs associated with public health and environmental impacts.
- Increased private investment in renewable energy projects that removes the generation burden from EVN and shares it with many power consumers and power producers in a distributed generation model.
- “Socialized” electricity market that protects disadvantaged households with the least capacity to pay, but which is also financially sustainable for EVN and reflects a move to market-based pricing within the term of PDP VIII.
- Reduced greenhouse gas emissions and air pollution and the other costs relative to a coal-focused energy plan and alignment with Vietnam’s NDC commitments.
- Support SME and other private industry initiatives that reduce energy intensity, enable use of residential rooftop solar and increase energy efficiencies through public education and regulatory procedures.

POSITION PAPER OF HUMAN RESOURCE WORKING GROUP

EXECUTIVE SUMMARY: OVERVIEW REPORT ON HR WG'S WORK PROGRESS

***REVIEW OF REGULATIONS FOR FOREIGN COMPANIES
RECRUITING VIETNAMESE EMPLOYEES***

*Prepared by
VBF Human Resources WG*

- We welcome the new revisions on the draft decree on processes for foreign companies recruiting Vietnamese nationals.
- We are keen to cooperate to achieve the best balance of information visibility and administrative efficiency / legislative consistency.
- We all share the wish to provide the best labor mobility and job opportunities for Vietnamese candidates during these challenging economic times.
- Included in this paper are a number of suggestions regarding other human resources topics around trade unions, submitting documents online and website enquiries.
- EuroCham has provided detailed recommendations on employment taxes and work permits also included in this paper.

Firstly, we would as usual like to thank the Ministry of Labor, Invalids and Social Affairs for the excellent corporation with the HR working group and the business community.

Vietnam has benefitted greatly from the government's excellent handling of the Covid pandemic. Vietnam is ever more attractive to high quality foreign investors due to its stability, but also Vietnam's modern, dynamic workforce. The very forward looking modern new Labour Code further strengthens the attractiveness of Vietnam.

1. Recruitment of Vietnamese nationals by Foreign Invested companies

In this positive context, the earlier proposal to add restrictions and administrative burdens to foreign companies hiring Vietnamese nationals was uncharacteristic. Given the current pandemic and global economic challenges, we would encourage labour mobility as to give as many opportunities as possible to Vietnamese candidates. In these transformational times, companies have to react fast to changing market circumstances and where required hire additional staff quickly. For foreign companies in Vietnam to be able to do this increases the country's global competitiveness and helps to attract further foreign investors.

The foreign invested sector in Vietnam now already functions very efficiently in their recruitment activities. The modern high-tech Vietnamese candidates are already mainly utilising online recruitment channels run by private companies, as shown by the below chart;



We would encourage for all foreign invested companies including representative offices to be able to freely recruit directly, as this is then consistent with the Vietnam Labour Code (Article 11.1), the Vietnam Law on Enterprises (Article 5.1) and international trade treaties (including CPTPP and EVFTA).

We appreciate that it is useful for the government to have visibility on future hiring intentions of the foreign invested sector. We welcome having mechanisms for reporting this, as long as it does not duplicate existing information currently provided or create unnecessarily time consuming administration for companies. We are happy to work closely with the relevant government authorities in designing such a system.

We also appreciate that government employment agencies can have a positive role in encouraging workforce diversity, non-discrimination and inclusion of disadvantaged candidates, for example

from minorities or with disabilities. We are also happy to work with the relevant government authorities in advancing such a system. This system would be most effective as an additional option and resource for the private sector to use, rather than an enforced obligation for the reasons outlined earlier.

2. Proposals and comments from other Chambers

- Trade union fee of 2%: In the context that the law allows multi employee representative organizations in a company, how the trade union fee will be allocated? Or whether it should not be collected anymore?
- Foreign labor: The issue of work permit exemption for capital contributors in LLC or members of Board of Management of JSCs holding VND5 billion.
- Many labor reports but no online system for the submission, leading to a big administrative costs for employers. We recommend online submission options in the future.
- Release schedule of related laws, decrees and circulars about new labor law: Please clarify release schedule of update or newly release of those regulations.
- Timeliness of response to questions raised at MOLISA web-site.

3. Proposals and comments from EuroCham

3.1 Recognition of the assignment letter as a supporting document for deductible employment costs

Issue description:

According to Clause 1, Article 2, Decree 11/2016/ND-CP dated 03 February 2016 of the Government (“Decree 11”) specifying the regulated entities of Decree 11 states that:

“1. Employees who are foreign citizens moving to Vietnam for working purpose (hereinafter referred to as the foreign employees) under the following forms:

a) Executing the labour contracts; or

b) Complying with the company’s internal reassignments; or

[...]”

Accordingly, it is clear that the current regulations recognise the foreign employees working under labour contracts and under internal assignments are of different groups.

In fact, the assignment letter (or equivalent documents) has been recognised by local tax authorities as a supporting document for deductible employment costs, via some official letters such as: Official Letter 6990/CT-TTHT dated 08 July 2019 and Official Letter 1565/CT-TTHT dated 28 February 2018 of Ho Chi Minh City Tax Department.

Recommendation:

We recommend the Ministry of Finance (“MOF”) consider recognising the assignment letter for foreign workers working for a definite term of less than 01 year as a supporting document for deductible employment costs so that the tax regulations are consistent with the labour regulations and in line with international practice.

3.2 Exclusion of the foreign employees from subjects of trade union (“TU”) contributions

Issue description:

According to Article 5, Decree 191/2013/ND-CP of the Government on the TU contribution rate and contribution base, *“The contribution rate is at 2% of the salary fund for social insurance contribution for employees. This salary fund is the total salary of employees who are subject to social insurance contribution according to the social insurance regulations.”*

As the foreign employees have been subject to compulsory social insurance (“SI”) since 01 December 2018 according to Decree 143/2018/ND-CP dated 15 October 2018 of the Government (“Decree 143”), some local labour federations have requested the enterprises to pay TU fees of 2% for foreign employees who are subject to compulsory SI.

However, Clause 1, Article 5, Law on Trade Union 2012 stipulated the right to establish, join and operate trade unions as follows: *“Vietnamese employees working in agencies, organizations and enterprises have right to establish, join and operate trade unions”*. Accordingly, foreigners cannot participate in trade union organisations. Therefore, it is unjustified to require enterprises to pay TU fees for foreigners who are not allowed to participate in the TU.

Recommendation:

We would like to recommend the Vietnam General Confederation of Labor, and the Ministry of Labour, Invalids and Social Affairs (“MOLISA”) to consider providing detailed guidance that the foreign employees are not subject to TU fee contributions in order to make the TU and SI regulations become consistent and avoid the increase of cost burden for enterprises.

3.3 Extension of forms of “internal transfer”

Issue description:

According to Clause 1, Article 3, Decree 11, *“1. Foreign workers internally reassigned in the company are the managers, chief executive officers, experts and technicians of a foreign enterprise which has established a commercial presence in Vietnam, are temporarily reassigned within the same enterprise to its commercial presence in Vietnam and have been employed by the foreign enterprise for at least 12 months.”*

According to Article 2, Circular 35/2016/TT-BCT issued by the Ministry of Industry and Trade dated 28 December 2016, commercial presence can be in the following forms:

- “a) Foreign-invested business organizations;*
- b) Representative offices and branches of foreign traders in Vietnam;*
- c) Executive offices of foreign investors as stipulated business cooperation agreements.”*

The above regulation is being interpreted by the provincial Departments of Labours, Invalids & Social Affairs (“DOLISA”) that only the assignment of foreign employees from the overseas parent company to its wholly directly owned subsidiaries in Vietnam is considered an internal transfer while the mobilization of the employees from other group companies, even from the ultimate parent company to the Vietnam-based company or mobilization from the parent company to the branch or representative office of its subsidiary in Vietnam is not considered an internal transfer.

The DOLISA's explanation of "internal transfer" is a very narrow one and mis-reflects the fact of global mobilization of human resources of multinational companies.

- As an international practice, human resources are often mobilized globally within the group to take advantage of the large pool of skillful human resources and to meet the business requirements in each country. Therefore, from the point of view of enterprises, the concept of "internal transfer" is not understood as the transfer between the direct parent company and its subsidiary but referred to the transfer at the global level.
- Due to the failure to meet the conditions to be treated as "internal transfer", the subsidiary in Vietnam must sign an employment contract with foreign employees who are dispatched from group companies which are not its direct parent company. As a consequence, the employment relationship will be distorted and extra-costs of compulsory insurances and TU fees for both employee and employees will be incurred, especially when the foreign employee still pays mandatory social security in his/her home country and, in fact, the foreign employee rarely utilizes the benefits from SI fund mostly due to language barriers and administrative procedures.

Recommendation:

- We recommend the MOLISA consider acknowledging the mobilization of employees within a group at the global level as internal transfer.
- We recommend the Ministry of Industry and Trade consider expanding the forms of commercial presence in Vietnam.

3.4 The draft Decree on foreign workers in Vietnam, replacing Decree 11/2016/ND-CP

- **Minimum capital contribution for work permit exemption**

Issue description:

With regards to Article 7.1.(a) of the draft Decree, the provision is that the owner or capital-contributing member of a limited liability company with a capital contribution of VND 5 billion or more is not subject to a work permit. The threshold of VND 5 billion for foreign investors is a very high threshold and will discourage foreign investors and FDI investments if they are still required to obtain a work permit.

Recommendation:

Based on Clauses 1 and 2, Article 154 of the Labour Code, we recommend setting a minimum threshold of 300 million Vietnam dong. In practice, this is the amount required by the authorities as the minimum for a foreign-invested business. Thus, we recommend aligning the minimum capital contribution for the work permit exemption with the minimum applied by the authorities in practice and to keep the threshold low to encourage foreign investment and help to expedite Vietnam's recovery from the economic crisis caused by the COVID-19 pandemic.

In addition, Vietnam's WTO Services Chapter commitments cite the GATS language prohibiting quantitative restrictions on service providers (including among others any kind of minimum capital thresholds) except in certain sectors (e.g., credit institutions for the sake of national financial stability). In areas where services are opened, no such quantitative restriction can be imposed on a discriminatory basis (i.e., for foreign invested companies and not local ones).

- **Duration of work permit**

Issue description:

According to Article 20 of the draft Decree on validity of renewed work permits:

“The validity period of a renewed work permit complies with that of one of the cases specified in Article 11 of this Decree but the work permit can only be renewed once for a maximum period of 02 years.”

This provision may suggest that a foreigner will no longer be able to continue working in Vietnam after 4 years (2 years for the new work permit + 2 years for the work permit renewal).

Recommendation:

We suggest including in the draft Decree that, for continuing to work in Vietnam beyond a 4 years period, a new work permit application shall be lodged and that the applicant is not required to leave Vietnam as part of this process.

We, therefore, propose supplementing a second clause to this Article as follows:

“If, after the expiry of the extended period under Clause 1 of this Article, the foreign worker and the employer wish for the foreign employer to continue working with the same employer (at the same or different job position and the same or different job title stated in the granted work permit), the foreign worker and the employer shall submit an application for a new work permit. The dossier of application for the new work permit shall include the papers specified in Clauses 1, 2, 3, 5, 6, and 7 of Article 18 and a work permit or a certified copy of the granted work permit or as required by the applicable regulations in effect at the time of filing”.

In addition, we seek clarification on whether a new application could be submitted before the expiry date of the original renewed work permit.

CHALLENGES AND OPPORTUNITIES IN THE NEW NORMAL

REBOOTING BUSINESS; ATTRACTING MOBILE INVESTMENT FLOWS

*Prepared by
Education & Training Working Group*

Introduction

Our previous position paper in January of this year discussed the topic “Leapfrogging to Education and Workforce 4.0”. However, at that time, we could not imagine what was coming and the importance of having a robust and adaptable education system is now so much more urgent and important. We mentioned back then that technology had changed the rules, however, in the current situation the use of technology at all levels of education is both urgent and crucial.

In this paper we will review the current situation, examine what the “new normal” will look like, the importance of TVET, and discuss what needs to be done. The whole education system needs to review its strategies to deliver effective education in light of the current environment. This is critical to meet the needs of industry both today and in the future.

More than ever, Government agencies (both local and foreign), educational institutions, and industry need to collaborate to take advantage of current opportunities and mitigate or remove risks.

The Current Situation

Obviously the effects of COVID 19 are having an impact on all levels of education in Vietnam. The impact includes but is not limited to the following:

- Vietnamese students:
 - ✓ returning from overseas who need to complete their studies.
 - ✓ who have cancelled or postponed their overseas studies.
 - ✓ who are studying overseas but are now using online learning platforms.
 - ✓ who would like to study overseas but are now unsure if this is feasible.
- Overseas students who cannot now come to Vietnam.
- Overseas academic staff who are having difficulty or cannot come to Vietnam. This applies to both short and long-term staff.

A number of institutions are now using online learning platforms to supplement their traditional modes of delivery. This is in the early stages of development and delivery and has faced various degrees of success. Much more needs to be done with regard to this. The lecturers are not skilled in delivering online classes, the students are not familiar with the technology, and the IT infrastructure is, in some cases, not capable of carrying the traffic that online learning generates. A combination of traditional face-to-face delivery and online learning, i.e. blended learning, may be the best strategy in many cases.

Quite likely, every university in Vietnam has a mission statement that includes achieving international recognition as a quality university. Within the next 10 to 20 years, universities around the world will each need to utilize appropriate online education or face extinction. Vietnamese universities and regulatory authorities can work with experts from foreign universities to develop a strategic plan leading Vietnam to become a leader in online education.

In the short term, technology can help overcome a number of the difficulties faced in the current environment and in the longer term it will help keep education in Vietnam current and competitive. Students who would go overseas are now looking at studying in Vietnam and this is a good opportunity for local institutions if they are positioned to take advantage of the situation. The days of “bricks and mortar” educational institutions will be replaced by “bricks and clicks” or even just “clicks”. This is already happening.

The “New Normal”

What is the “new normal”? What challenges and opportunities does it bring? How do the traditional “brick” institutions transform themselves to remain competitive in the new environment? How can Vietnam continue winning in the 4.0 age? These are very difficult questions, however, there has been much reflection and research undertaken on these topics. Technology has and will increasingly play a major part in defining what the future environment for education will look like. The current crisis has only accelerated the need to move to a new business model for most levels of education. How do the traditional “brick” institutions transform themselves to remain competitive in the new environment?

Most children in school today will be entering into jobs that are unknown to us today. This generation is markedly different from previous generations in terms of exposure, availability of information and content, and adaptability to the new technologies. Educational institutions have the responsibility to enable individuals to be future ready and reduce their rate of obsolescence.

Non-traditional thinking needs to be encouraged when it comes to imparting education using technology-based tools and resources to drive education in non-traditional ways. Students will be much less often in traditional classrooms and will increasingly use on-line learning using digital platforms. The future of education means that it will cater to the needs of Industry 4.0, deploy the potential of digital technologies, and it will create a blueprint for the future of learning – from school-based learning to learning at the workplace.

Education must keep pace with the world it is training students for and have a more realistic and practical approach to learning, resulting in great student learning outcomes. Research also shows that increased personalisation in education leads to better student learning outcomes and the digitization of education makes this personalised learning possible. The benefits of effectively digitising education are many and affect a range of stakeholders.

- Students will have better access to, and relationships with, other participants in the system. Student learning outcomes will improve proportionately to how well digital education is implemented.
- The use of technology will also make it easier for teachers and lecturers to provide a personalised learning experience for students. This will result in better student learning outcomes, which means better teaching outcomes because what teachers are doing actually achieves practical results.
- For management and non-academic staff there will also be benefits as it allows these workers to reduce bureaucracy and, instead, focus on improving the quality of support to the students and academic staff.
- The benefit to industry is that the education system will supply industry with higher quality graduates who are more work ready. This will improve the performance of the workforce and thus the performance of industry and the economy as a whole.

TVET

Vocational skills training and boosting employment is at the heart of the Vietnamese Government development goals. The Government also wants to tailor its vocational training more to the needs of industry and advanced technologies and to focus more on the skills needed for the effective implementation of Industry 4.0. The Vietnamese government has recognised the need to increase the involvement of the private sector in TVET. This will help raise additional resources for TVET implementation, and improve the quality and relevance of TVET training programs.

One possible strategy to involve the industry, as identified by organisations including, but not limited to ADB, GDVT, GIZ, ILO and JICA, is through the initiation of active collaboration measures by the TVET institutions. The Australia-Vietnam Human Resource Development Strategy 2014-2020 includes initiatives to improve the Vietnamese TVET sector's responsiveness to industry needs through enhancing TVET-private sector engagement.

Whilst there are many great initiatives that are all helping improve TVET in Vietnam we still believe that the following are the main areas that need to be addressed:

- Meeting industry needs through dynamic curriculum development;
- Improving recruitment processes through better program offerings and marketing;
- Building the capacity of teachers, managers and leaders along the international and modern TVET institutional practices; and
- Effectively implementing the National Qualifications Framework.

It is important that we continue to work on these areas and find solutions to help improve the TVET system. Therefore, we look forward to continued progress in this matter and would like to take this opportunity to thank MoLISA in advance for their cooperation.

What needs to be done in Vietnam to Overcome the Challenges and Leverage on the Opportunities?

There are many initiatives and projects already being undertaken in Vietnam and a number of these are listed in the reference list below. In light of the current crisis these have become much more urgent. Please also refer to Appendix 1 for input from the EuroCham Human Resources & Training Sector Committee. The following are some recommendations that should be considered in order to enhance the role of educational institutions in supporting the business community in Vietnam to achieve rapid and sustainable development.

- Higher education institutions should focus on the learner, supported by technology, in-person guidance, and industry relevant content to meet the learner's individual learning needs. Higher education institutions have a critical decision to make: Embrace new opportunities and succeed or make the wrong choice and perish?
- Focus on building unrivalled student experience through flexible program structures that enable lifelong learning and provide learners with multiple entry and exit options. They could provide learners with predictable schedules and opportunities for collaborative learning. By combining the theory and practice, the integration of the trainee into working processes can be ensured from the beginning (AHK).
- Enhancing the skills of teaching staff at all levels of the state education system by providing them with access to international standard continuous professional development and teacher training in modern educational practices.

- To further encourage foreign investment in this sector, local public education institutions should be encouraged to partner with private international education institutions in the training of teachers working in the public school system.
- Address employability challenges by providing the required employability skills and integrating with industry to provide greater exposure to students right through their university experience. Tertiary education institutions should collaborate much more with the private sector to find out the remedial reskilling being done by companies, then incorporate it into their courses so students are prepared before joining the workforce.
- Regulators need to appreciate online education as a viable medium of learning. They would have to provide a forward-looking ecosystem for Education 4.0 and work with higher education institutions on developing a regulatory framework that addresses issues of quality control, accreditation, and information privacy. Self-learning online should be encouraged at every opportunity by explaining its real value to people's careers

Conclusion

In conclusion, the Vietnamese economy needs to be prepared for the challenges and opportunities that will arise in the “new normal”. This means that all major stakeholders, in the education industry, need to move with more urgency to create the environment that will take advantage of the available technology to ensure education at all levels in Vietnam is effective and competitive.

Vietnam has always attached great importance to investing in the education sector which is regarded as a key factor in ensuring sustainability in socio-economic development. This development needs an education system that will supply the “work ready” graduates with the skills needed to drive the new economy.

The Education and Training Working Group, through the VBF and in collaboration with MoET, MoLISA and the Chambers of Commerce, will continue with our commitment to assist Vietnam in taking advantage of the opportunities and overcoming the problems to help Vietnam achieve its economic potential.

Appendix 1: Feedback from EuroCham's Human Resources and Training Sector Committee

No.	Comments	Recommendations
1.	In light of the current impact that Covid-19 pandemic has had on the education of children around the world, education has had to rapidly shift from traditional classroom settings to digital spaces and online learning. This is a new practice that requires expertise, training and technological skills to be impactful on the education of students to ensure they receive a quality education.	we strongly encourage the Vietnamese authorities – in particular the Ministry of Education and Training - to partner with international education institutions in Vietnam to provide teacher training in the areas of online education based on international best practice. This is an opportunity to enhance teacher ability and meet the needs of students.
2.	Air quality is a serious issue which is a deterrent to making Vietnam a regional hub for education. Air quality impacts the health of the population and is also a deterrent to attracting foreign experts with families to working in Vietnam. It	Our working group strongly recommends that the Vietnamese authorities prioritize improvements to air quality as this will have a positive impact on the health of all citizens, while also reducing the negative impact this has on attracting foreign

No.	Comments	Recommendations
	also reduces the appeal of Vietnam as an education hub for the region.	experts, their families as well as prospective international students.

References:

- AHK; Dual Vocational Training: <https://vietnam.ahk.de/en/training-job/dual-vocational-training/>
- Australian Government – Department of Foreign Affairs and Trade; Australia-Vietnam Human Resource Development Strategy 2014-2020: <https://dfat.gov.au/about-us/publications/Pages/australia-vietnam-human-resource-development-strategy-2014-2020.aspx>
- Australian Government – Department of Foreign Affairs and Trade; Assisting the development and employment of a highly-skilled workforce in Vietnam: <https://dfat.gov.au/geo/vietnam/development-assistance/Pages/assisting-the-development-and-employment-of-a-highly-skilled-workforce.aspx>
- Bosch Vietnam; Development Partnership with Bosch reaches the next phase: <https://www.bosch.com.vn/en/news-and-stories/development-partnership-with-bosch-reaches-the-next-phase/>
- British Council; Internationalising higher education: <https://www.britishcouncil.vn/en/programmes/education/internationalisation>
- Build IT; Creating a world-class model for innovative technology and engineering higher education: <https://builditvietnam.org/>
- DAAD: <https://www.daad-vietnam.vn/en/>
- EMVITET PROJECT DEVELOPING EDUCATION 4.0 IN VIETNAM: Higher Engineering Education Alliance Program (**HEEAP**): <https://hecap.org/>
- Japan International Cooperation Agency (JICA): https://www.jica.go.jp/project/english/area/asia/027_1.html
- Ken Research
- Korea International Cooperation Agency (KOICA): http://www.koica.go.kr/vnm_en/7668/subview.do
- Leapfrogging to Education 4.0: Student at the Core: <https://m.dailyhunt.in/news/india/english/business+world-epaper-bizworld/leapfrogging+to+education+4+0+student+at+the+core-news+id-75865591>
- Winfrid W.M.; Making Digital Transformation Inclusive
- PISA: <https://www.oecd.org/pisa/>
- Reform of TVET in Viet Nam: <https://www.tvet-vietnam.org/en/topic/74.news.html>
- World Bank - The Economic Case for Education in Vietnam: <http://documents.worldbank.org/curated/en/115641545141262780/The-Economic-Case-for-Education-in-Vietnam>

POSITION PAPER OF INVESTMENT AND TRADE WORKING GROUP

*Prepared by
VBF Investment & Trade WG*

1. The New Normal and the New Investment Landscape

The COVID-19 pandemic has disrupted the economy of Vietnam and the world. The international travel and hospitality sectors are greatly impacted, and overall foreign direct investment ("**FDI**"), M&A and exports also face challenges given market uncertainties and difficulties in mobility.

However, there are also bright spots and cautious optimism given the robust management of the Vietnam Government in keeping the country safe, and also the determination of businesses and people to adapt - for example (i) factories that switch to producing personal protective equipment ("**PPE**") instead of garments, (ii) electronic products and furniture exports (supporting the work-from-home trend), (iii) domestic and online education, (iv) e-commerce and other online services, (v) growth in renewable energy, and (vi) attracting investment in supply chain and logistics infrastructure to serve relocation of production from China to Vietnam and to support domestic e-commerce. It is also encouraging to see Vietnam enter into and implement its international trade agreements (the EVFTA being the most recent).

These efforts are reflected in the growth of the Vietnam economy in the first three-quarters of 2020, which whilst not at the same rate as pre-pandemic times, but nonetheless amongst the leading in the region (and the world) where most countries are facing economic contraction.

Vietnam has also issued new key laws that take effect in 2021 - in particular, the Investment Law, the Enterprise Law, the Securities Law and the Private-Public Partnership ("**PPP**") Law. There is also a relatively new merger filing regime that took effect in the middle of 2020.

All these new laws, and implementing regulations and procedures, will create a new investment regulatory framework. This in turn will impact how investment and business will be conducted in the new normal at present and the foreseeable future, which hopefully would also be shaped by the gradual and studied easing of safety measures and travel restrictions, and more understanding as to how COVID-19 should be best treated.

We offer our feedback and suggestions below (as based on current and new laws) regarding the reforms and improvements that can be made so as to support the resilience and advancement of the Vietnam business environment and economy through investment and trade.

2. Investment / Licensing**2.1 Time consuming licensing procedure**

With regards to licensing procedures for establishing a foreign-invested company in Vietnam, there are still a number of administrative challenges. In particular:

- Different authorities are responsible for various aspects of the licensing procedure in Vietnam, and they do not have a time-efficient and streamline method of communicating with one another. For example, the Department of Planning and Investment ("**DPI**"), and other relevant authorities, like the Ministry of Industry and Trade ("**MOIT**"), the State Bank of Vietnam ("**SBV**") and others, still communicate with each other through post during the licensing process. Between Hanoi and Ho Chi Minh City (and the different provinces), delivery of mail

can take up to 1 to 2 weeks. This process significantly delays applications and approvals. Authorities can use (secured) email, an online procedure, and/or courier, to hasten the process.

- The only way for applicants to check on the latest status of their Investment Registration Certificate ("**IRC**") application is to go to the DPI daily. This is time consuming and cumbersome. There is an online dossier status tracking system, but this needs to be properly implemented.
- Licensing authorities (e.g. the local DPIs) do not accept application documents affixed with e-signatures. It is burdensome and onerous for businesses to obtain wet-inked signatures and collate originals for licensing applications (especially during the pandemic and given mobility restrictions in many other countries). Authorities can use an online procedure, and have a system to accept digital signatures, to hasten the process.

Again, the above issues can be addressed with a robust online application system. Further, adoption and recognition of electronic signatures (in particular digital signatures) would ease administrative burdens for companies.

2.2 New Enterprise Law

We raise the below comments on the new Enterprise Law ("**New Enterprise Law**"), which take effect from 1 January 2021.

- Under the New Enterprise Law, the application for an Enterprise Registration Certificate ("**ERC**") may be submitted by one of the three ways below:
 - physically conducted at the provincial business registration authorities;
 - by postal service; or
 - online application through the National Portal of Business Registration ("**NPBR**").

The New Enterprise Law provides that an online application made through NPBR shall have the same validity as an application submitted physically to the provincial business registration authorities. However, it is unclear whether the authorities will still require both online and physical submissions in practice. We propose the Government to provide a specific guidance on online application through NPBR (and not having to supplement with physical submissions) in the decree guiding the New Enterprise Law.

- The New Enterprise Law retains the requirement that charter capital (by way of cash) must be contributed within 90 days from the date of establishment of the enterprise. However, for capital contributions in-kind/other assets, the 90-day time frame can exclude the time required for transportation, import and other administrative procedures for the transfer of ownership of assets.

Moreover, the investor shall have the rights and obligations corresponding with their committed capital amount in the company within the period from the date of establishment of the enterprise to the final date of the statutory timeline for capital contribution. If the investor who commits to contribute capital in cash fails to contribute the committed capital amount, they (i) shall only have rights corresponding with their already contributed capital amount (i.e., in case the investor fails to contribute fully the committed capital amount), or (ii) shall be automatically no longer a member of the company (i.e., in case the investor fails to contribute the committed capital amount).

However, in the event of capital contribution in-kind, if the law does not stipulate any rationale for determining the timeline of capital contribution in-kind, the investor contributing capital in-kind can try to rely on this exception (that the 90-day period excludes the time needed for asset transfer procedures) to assert that they always have the rights and obligations corresponding with their committed capital amount in the company even when the contribution in-kind has not been made by the investor.

As such, we propose that the Government provides further guidance on the timeline for capital contribution in-kind. For example, the decree implementing the New Enterprise Law can stipulate that capital contribution in-kind must be contributed within a reasonable period of time, as agreed to by the investors and notified to the competent licensing authority in the application documents for enterprise establishment. If the investor contributing capital in-kind foresees that the notified timeline might be delayed in practice, they need to discuss with the remaining investors to agree on an extension of time and notify such extension to the competent licensing authority at least a certain number of days before the end of the timeline.

- The New Enterprise Law stipulates that existing shareholders of a joint stock company ("**JSC**") will have pre-emption rights with regard to new shares issued under a private placement, except in case of merger or consolidation.

This suggests that waivers of pre-emption rights from all existing shareholders will be required to issue new shares by way of a private placement to a new shareholder without first offering them to the existing shareholders. In such case, it appears that such waivers may be required to be included in the application documents for registration of the increase of charter capital as a result of private placement, which will become a burden for JSCs looking to bring in a new investor and capital by way of private placement.

Moreover, there would be no difference between the procedures of issuing shares to existing shareholders and the procedures of private placement if pre-emption rights are granted to existing shareholders in both cases.

We seek clarification that the JSC is able to conduct a private placement as approved the General Meeting of Shareholders ("**GMS**") as opposed to getting the approval of each and every shareholder.

2.3 New Investment Law

We raise the below comments on the new Investment Law ("**New Investment Law**"), which will take effect from 1 January 2021.

- The key change in the New Investment Law is the introduction of the "negative list" approach, according to which foreign investors will be entitled to market access conditions applicable to domestic investors for any sectors not included in the list of sectors in which foreign investors are restricted from accessing ("**List of Restricted Sectors**").

According to the New Investment Law, the government will issue a List of Restricted Sectors, which must specify: (i) the sectors where market access is not yet allowed; and (ii) the sectors where market access is conditional ("**List of Conditional Sectors**").

The Government has released the draft decree guiding the implementation of the New Investment Law ("**Draft Decree**"), which is expected to be effective from 1 January 2021 and replace Decree 118/2015/ND-CP.

The Draft Decree provides that foreign investors will be entitled to market access conditions applicable to domestic investors for any sectors not included in the List of Restricted Sectors. It also provides that the business lines under which Vietnam has not yet committed to national treatment according to international treaties of investment and Vietnamese laws do not have provisions on restrictions applicable to foreign investors, the foreign investors are able to apply the market access conditions as prescribed for domestic investors.

However, under the Draft Decree, it also noted that the List of Conditional Sectors is long (39 items), as it consolidates the business lines for which Vietnam had commitments to and conditions on in their international treaties with regards to foreign investment, and includes *“new business lines that do not exist in the territory of Vietnam at the time the Law on Investment is effective”*.

We urge that this List of Conditional Sectors, when being referred to and implemented in 2021 by the licensing authorities, do not become the de facto "highly sensitive and scrutinized" list (where the licensing process becomes unreasonably prolonged because of unnecessary scrutiny), or be treated as the de facto "positive" list (where foreign investors can only invest in these sectors as these are the sectors where Vietnam has made treaty commitments, and which would be highly scrutinized as well).

The "catch-all" provision at the end of this list is also concerning as it is very broad and the implications are uncertain. For example and in particular, the digital economy is substantially driven by new business models that leverage on and adapt to new technologies and applications, such as in intermediary payment services ("**IPS**"). If there are new business activities that emerge in 2021, it creates uncertainty for foreign investors and licensing authorities as there are no treaties and commitments that provide what the market access conditions might be. We therefore suggest removing this item - *new business lines that do not exist in the territory of Vietnam at the time the Law on Investment is effective* - from the List of Conditional Sectors.

- The New Investment Law has amended the nature of foreign-invested companies that will be treated as domestic investors when they make investments in other companies. In particular, the threshold allowed for foreign investors (in such foreign-invested companies that are eligible to be considered as a domestic investor in its subsequent investment) has reduced slightly to no more than 50% (as opposed to the current Investment Law where the threshold is less than 51% foreign ownership).

We would like to have clarity that such foreign-invested companies (that have for example 50.9% foreign ownership at present) and have made investments as a domestic investor pre-2021, would not need to reduce such foreign ownership level to 50% in 2021 so as to meet the requirements for being considered a domestic investor under the New Investment Law in order to hold on to its pre-2021 investments.

2.4 Merger Filing

Decree No. 35/2020/ND-CP, which took effect on 15 May 2020, implements several articles of the Competition Law ("**Decree 35**"), in particular with regards to the merger filing regime.

The authority charged with administering the Competition Law (i.e. the National Competition Commission or "**NCC**") has not yet been constituted. So the MOIT and the Vietnam Competition and Consumer Protection Authority ("**VCCPA**") has taken the lead in administering the Competition Law.

Specifically, under the new merger filing regime, economic concentrations (i.e. mergers, consolidations, acquisitions, and joint ventures) are subject to notification and pre-approval if certain notification thresholds are triggered. The changes under the new law now causes for more M&A transactions to be captured under this requirement. Therefore, it is crucial for investors and corporations to be able to determine for themselves which M&A activities are captured and which falls outside the intended scope of the merger filing regime.

Currently, there are uncertainties in the interpretation and application of the regulations, which would benefit from further guidance/clarifications. Such uncertainties includes:

- Whether internal restructurings/ intergroup transactions fall within the scope of "concentration";
- Whether negative control of a target company by way of veto rights falls within the scope of "control";
- Whether the market share threshold would be applied where there is no overlap in the parties' activities, and if so, how should such threshold be calculated;
- Whether the seller's local asset, revenue, or market share figures are considered when determining whether notification thresholds are triggered, especially where the seller post-transaction would no longer have ownership in the target.

Further, the economic concentration under the new merger regime maintains heavy focus on market share assessment. Similar to the previous Competition Law, the current law's provisions on relevant market determination continues to serve as a hurdle for many investors. To that end, investors can benefit from specific guidance on how relevant market determination should be conducted and where to obtain the relevant information and figures.

With regards to other provisions under the Competition Law (i.e., regulations on anti-competitive agreements and abuse of market dominance/monopoly position), there remains no guidance on how the specific acts under these provisions should be interpreted/applied in practice. While Decree 116/2005/ND-CP under the previous Competition Law provided such clarity, the current implementing Decree 35 is still lacking in this regard.

2.5 Completion of M&A Transactions

For M&A transactions to complete and demonstrate the change of ownership in a company, it is necessary to obtain an amended ERC (in the case of a limited liability company or "LLC"). Pursuant to application of law, typically, the buyer would only make the purchase price payment after the licensing authority issues an amended ERC showing the name of the new investor/buyer. However, as experienced by members in certain cases, the Binh Duong licensing authority still asks for proof of payment of the purchase price before accepting the application to amend the ERC - meaning that the buyer risks paying the purchase price before the ownership has transferred (as evidenced by an amended ERC showing the name of the new investor).

3. Labor

3.1 Mobility/Entry of Foreigners

While we appreciate the Government's efforts in prioritizing the safety of everyone in Vietnam during the pandemic, we hope that the Government will consider and implement further measures to gradually and safely enable the entry of foreigners - in particular, where such persons are vital to support the growth of Vietnam's economy.

This may include top-level managers of companies in Vietnam, technical experts that are needed for site visits or implementation of new projects, or business teams conducting due diligence and negotiating contracts.

In brief, we propose some recommendations in terms of mobility policies for inbound foreign passengers, being:

- To consider and expand a list low-risk countries (and enable shorter-period or no quarantine);
- To continue requiring testing and a negative result prior to departure;
- To consider home/own residence quarantine options (as there are foreigners that are here on a long stay employment basis) with regular monitoring;
- Allowing foreigners to enter for general business purposes (not just those who work for companies in Vietnam and satisfy work permit requirements, but also those who work with companies in Vietnam under general business circumstances);
- To continuously monitor movement and activities for those with shorter-period or no quarantine, and in Vietnam for a short stay; and
- To simplify entry procedures for foreign employees who have already obtained a valid work permit or a work permit exemption certificate.

3.2 Workforce

With regards to managing the workforce, and the cash-flow challenges our members face, we propose the below for the Ministry of Labor, War Invalids and Social Affairs ("**MOLISA**") and the Government to consider.

- The overtime caps for employees make it difficult for our members to have other employees fill in for those who cannot be present at the work site. The overtime caps also hinder production capabilities generally.

We recommend an increase in the overtime caps (e.g., up to 400 – 500 hours in a year), as long as employees are taking on overtime under a full voluntary basis.

- With the passage of the new 2019 Labor Code 2019, which takes effect from 1 January 2021, the representative organization of employees is no longer required to be a trade union under the Vietnam General Confederation of Labor, but can be an organization which is voluntarily established by the employees. Therefore, the compulsory contribution of the trade union fee on a monthly basis at a fixed rate should be reconsidered.

We recommend that upon the effective date of the new Labor Code, trade union fee contribution should be a non-compulsory item for enterprises and each employees' representative organization can determine their organization's contribution rate.

4. Insurance Agents - Deductibility of Expenses

As previously raised, the Insurance Supervisory Authority ("**ISA**") has adopted an approach that certain long-standing agency activities in a tiered-agency model ought not be recognized as in-scope agency activities as recognized under law. This interpretation of law, which narrows the allowable scope of operations of insurers and deductibility of related expenses, is inconsistent with the market practice established by key insurance players in Vietnam and international markets, as well as the long-standing acceptance by Vietnam tax authorities and the ISA itself. The regulators should take a broader view to recognize the model and apply the law consistently to accept all

related expenses as reasonable and legitimate expenses for corporate income tax calculation purpose.

5. Real Estate

In addition to the concerns raised in our previous position paper, which are still pending resolution, we also raise the following issues to discuss:

- Under Article 2.1(i) of Resolution No. 60/2018/QH14 dated 15 June 2018 (“**Resolution 60**”), *“the land of the equitized enterprises shall be recovered and organized for public auction if the land is approved to be converted into a different purpose than what is in the approved equitization plan”*.

From the Vietnamese wording of Resolution 60, the timing of this Article is confusing, i.e., between the approval of the land conversion and the approved equitization plan, it is confusing as to which comes earlier. We note that Decree No. 167/2017/ND-CP, dated 31 December 2017 by the Government on disposition of public properties (“**Decree 167**”) provides the guidance for the approval of land use purpose conversion in correspondence with the approved equitization plan, i.e., the decision to convert the land use purpose must be based on the approved equitization plan (Art. 12.2).

However, no regulations address the scenario where the land has been converted into a different purpose prior to the approval of the equitization plan, or the scenario when the authority decides to convert the land use purpose after the approval of the equitization plan as may be raised under Resolution 60.

We request for further guidance to address this confusion.

- There is strong interest in the logistics sector, in particular with regard to investments in warehousing and fulfilment centres to support the growth of e-commerce. However, our members have experienced uncertainty and challenges in accessing land and sites - for example, when land and sites/properties are re-zoned for different purpose and/or where land use rights certificates are not updated, this makes it difficult for the potential investor/buyer to ascertain if the location/site is suitable and whether the project will be licensed for the investor's intended use in warehousing/logistics. Auction processes as conducted in the case of insolvency also create uncertainty as procedures (and subsequent approvals and licensing), in particular where foreign investors are looking to participate in the bid, are not clear.

6. Food and Beverages

- Circular No. 24/2019/TT-BYT provides a list of permitted additives used in food, but this list is not automatically updated in accordance with Codex (Codex General Standard for Food Additives). Furthermore, this Circular requires the flavourings must be assessed by the JECFA (The Joint FAO/WHO Expert Committee on Food Additives) while many other countries permit the assessment by other organizations such as FEMA (The Flavor and Extract Manufacturers Association of the United States) and IOFI (The International Organization of the Flavor Industry). Accordingly, the food companies have faced many difficulties in declaring, importing and using food flavorings for manufacturing food due to this regulation. This regulation should be amended to broaden the permitted assessments by to other organizations.

- Circular No. 18/2019/TT-BYT requires GMP compliance certificate for health supplements. However, in practice, many countries in the world (e.g., Germany, Spain, Italy, Australia, and other EU countries) do not issue GMP or confirmation upon requests of Vietnam. They only issue certificates of GMP compliance for food or pharmaceuticals or certificates like Hazard Analysis and Critical Control Points (HACCP), ISO 22000. This has affected the importation of products by our members. We would like to seek guidance from the MOH for cases in which authorities of other countries do not issue certificates of GMP compliance for health supplements and certification letter at the request of Vietnam, but only issue general GMP for food for pharmaceuticals, or certificates such as HACCP, or ISO 22000. We request that the MOH accepts certificates of GMP compliance for pharmaceuticals to produce food supplements like many other countries.

7. Healthcare

Vietnam's healthcare system has not kept pace with economic growth. There are regulatory red tapes in certain areas, insufficient regulations in others, and restrictions on foreign investments.

We believe that regulations can develop in a way that protects human health and also promote investments into and development of the healthcare sector.

In particular:

- Circular No. 32/2018/TT-BYT dated 12 November 2018 of the Minister of Health, regulating on registration of drugs, drug raw materials ("**Circular 32**") and Circular No. 15/2019/TT-BYT dated 11 July 2019 of the Minister of Health, regulating on drugs tender at public healthcare establishments ("**Circular No. 15**") contains the term "reference countries" which is defined to include certain countries, including some EU countries. However, it does not include all EU countries. This is an exhaustive list and only listed countries may enjoy status as reference countries for certain exemptions for one or more stages of clinical trial for vaccines and certain drugs prior to marketing authorizations. EU jurisdictions not listed as a reference country are not able to enjoy these benefits. This seems incompatible with the EVFTA, and we hope that the MOH will consider revising the list of reference countries to include all EU countries.
- Foreign medical practitioners are currently required to have an interpreter with qualification in medical sector and also a University degree for foreign language. Also, one interpreter can only work for one doctor only. The law should be amended to allow the interpreter to have a University degree of foreign language only. Regarding the medical terms in English, the foreign medical establishments can train their interpreters. Also, it should not be mandatory for each foreign doctor to have his/her own interpreter - it is only necessary for the medical establishment to have such interpreter present so long as there is a foreign doctor treating patients that do not speak the same foreign language as the foreign doctor.
- The delay of visa renewal approval while many marketing authorizations ("**MA**") have and will continue to expire starting from 1 July 2020 will directly impact the supply of medicines during the pandemic. Currently, a large number of medicines are under the review process for MA extension. To avoid an impact on the continued treatment of patients, and to reduce pressure on the healthcare sector during this critical period, as well as to facilitate companies' production planning, we recommend maintaining the validity of MAs expiring from 1 July 2020, until these products are granted five year extensions. Given the pandemic and the increased difficulties faced by enterprises in general and the innovator drug companies in

particular, we request the urgent attention and direction from the MOH regarding the above proposal so as to avoid the direct and immediate impact on the supply of medicines.

- During the pandemic, the demand for hygiene and disinfection products are significantly increasing. Particularly, hygiene and disinfection products are essential and critical for reopening businesses and keeping the workplace, schools and recreational centres safe. However, due to provisions under Decree No. 91/2016/ND-CP ("**Decree 91**") which requires specialized registration and certification to sell these products, the supply does not meet current demand of society, and accordingly our members cannot have sufficient quantity and quality of these sanitizers, disinfectants and decontamination products. As outlined in Decree 91, this process can take 3-4 months if all paper works are in order, and in many cases, may take considerably longer. We hope that the MOH and the Vietnam Health Management Authority ("**VIHEMA**") will fast track the procedure for licensing. In addition, we hope that the MOH and VIHEMA can waive testing requirements in Vietnam for any applicant who can provide a Certificate of Free Sale (CFS) from the competent authority or other form of approval from another WTO member.

8. Digital Economy

A strong digital economy will prove to be critical to continued growth in Vietnam, and this is especially highlighted during the COVID-19 pandemic as digital tools allow individuals to work from home. We believe that the Government will continue to promote and adopt digital solutions in working towards smart cities and Industry 4.0, and adopt laws and policies that promote the same.

We highlight a few examples below:

- Non-cash payment is critical to any modern economy. Certain restrictive measures around foreign investment in the digital payment sectors were previously proposed by the SBV, which would hinder growth in this sector. We understand that the limitation on foreign ownership in intermediary payment services has been removed by the SBV from the latest draft decree to replace Decree No. 101/2012/ND-CP, which we agree with and believe is necessary to encourage investment. We hope this is reflected in the final version of the decree.
- We note that the SBV has introduced a draft decree on a regulatory sandbox for fintech activities ("**Fintech Draft Decree**"). We hope that the SBV will continue to work on this Fintech Draft Decree with a balanced approach, in particular, minimizing the licensing and assessment procedures applicable to those fintech companies to take part in the fintech sandbox, further open the fintech sector to foreign investors, and at the same time, to enhance safety and security for users.
- It is critical for data to move across borders for transactions, research and other important purposes. Legislation on data and cybersecurity must take a pragmatic approach that balances both protection of personal data and sustainable economic growth. The COVID-19 pandemic further shows the importance of free data flow to business activities when communities are on lockdown and individuals are working from home. We hope that in drafting the implementing decree to the Law on Cybersecurity, the Ministry of Public Security will reconsider the data localization requirement and apply that to very limited situations. Similarly, the draft Decree on Data Protection must take a balanced approach that protects personal data but accommodates for use with informed consent and appropriate circumstance.

- As we mentioned in other sections above, conducting administrative procedures electronically can help to streamline processes, thereby saving time and resources. While electronic signatures have been recognized by law in Vietnam since 2005, due to the lack of comprehensive regulations and consistency in practice, it is not clear to what extent current legislation and practice accommodates existing electronic signature solutions. While Circular No. 16/2019/TT-BTTTT has provided further clarification compulsory standards for digital signatures and digital signature authentication services, we hope that there will be more clarity on which "non-qualified electronic signature" solutions have met the government's compulsory standards. This clarity will provide businesses with the assurance necessary to start implementing electronic signature solutions for transactions in Vietnam.

ATTRACTING INVESTMENT FLOWS INTO LARGE-SCALE POWER PROJECTS

SIX ISSUES WHOSE SOLUTION WOULD UNLOCK BILLIONS PPP PROJECTS AND INDEPENDENT POWER PROJECTS

Prepared by
VBF Infrastructure Working Group

Vietnam has been focusing in recent time on renewable energy. This group applauds the focus and the success of such focus.

But renewable energy is only a part of Vietnam's needs. A lot more electricity is needed to fuel the country's fast-growing economy. If it does not come from coal, it will have to come from gas or nuclear fuel. These projects can cost between \$5 – 50 billion. The VBF Infrastructure Working Group would suggest that in order for Vietnam to attract these sorts of flows, these projects should be viewed separately from other smaller infrastructure projects.

There are several starting points:

- Different policies are needed to attract investors into a \$5 billion LNG to power project from those required for a \$50 million solar project.
- Investors with a \$5 billion infrastructure project in Vietnam need large amounts of non-recourse bank debt. Banks do not lend on this basis unless they are confident that they will get their money back.
- If a large power project cannot be developed as a BOT project under the Law on Investment in Public-Private-Partnership Modality (**PPP Law**), either because it does not apply and because or is too inflexible for the needs of developers/banks, the only private sector alternative is an independent power project (**IPP**) under the Investment Law. Almost by default, LNG-to-power projects are being forced into this mode.

The VBF Infrastructure Working Group has looked at some of the impediments to securing these capital flows either as a BOT project under the PPP Law or as an IPP, and what steps Vietnam can take in this new, more competitive, Covid era to secure this capital.

Proposition	Impediments	PPP – how to secure greater capital flows	IPP – how to secure greater capital flows
1. Gather the capital from existing large project developments through appropriate grandfathering provisions. At the moment, there are several BOT power projects under negotiation between the Ministry of Industry and Trade (MOIT) and international sponsors and lenders. Although	According to the PPP Law, PPP projects that are under negotiation will have to comply with the provisions of the PPP Law regarding terms of the	The IWG suggests the Government consider setting a date for the application of the PPP Law to ongoing projects where the sponsors and	Not applicable in that large baseload power projects are currently being negotiated in the BOT format.

Proposition	Impediments	PPP – how to secure greater capital flows	IPP – how to secure greater capital flows
<p>the parties have not concluded the negotiations and the project contracts have not been finalised, the sponsors in those projects have diligently spent time and costs to work with the Government to prepare for the development of those projects for many years to date. All such time-consuming and costly works have been based on key regulatory and economic assumptions drawn from relatively established precedents of BOT power projects in Vietnam. In some projects, the sponsors have even started certain land compensation works so that the sites could be ready soon after the project documents are concluded.</p> <p>There are even several BOT power projects where the project documents have been concluded and initialled, but have not been officially executed because it needs more time for finalization and internal approval of certain pending issues.</p>	<p>BOT contracts and other aspects of project development, financing and operations. The application of such provisions will change important assumptions of the sponsors and lenders being the fundamental basis for their investment in the projects and causing delay in the already time-consuming project development process and significantly increased costs.</p>	<p>the MOIT agreed the Project Principles after the effective date of the PPP Law, subject to the condition that since agreement on the Project Principles, the sponsors have actively cooperated with the MOIT and the Government to develop the projects and negotiate the project contracts. Projects that satisfy such requirements should be permitted to continue to follow the law and practice applicable before the effective date of the PPP Law.</p> <p>Such an exception would reduce the risk that the capital from such long-negotiated projects will be lost.</p>	
<p>2. Government Guarantees and Undertakings</p> <p>Agreements are still needed for large projects.</p> <p>Large-scale projects tend to be more vulnerable than smaller ones to host country risks. Smaller ones may be more able</p>	<p>Currently, the 2014 Investment Law and Decree 63 on PPP both provide that the Prime Minister can decide to guarantee the obligations of State authorities or State-owned enterprises</p>	<p>The revenue deficit sharing mechanism set out in Article 82 of the PPP Law gives some predictability to the project in terms of revenue, but normally this relates to</p>	<p>IPPs such as are now developing LNG to power projects do not even have the hope set out in Article 82 of the PPP Law. Yet discussions with officials suggest that</p>

Proposition	Impediments	PPP – how to secure greater capital flows	IPP – how to secure greater capital flows
<p>to adapt to changes through alternative commercial solutions (e.g. alternative buyers or fuel supply sources, more flexible lenders, etc.). Large-scale projects should be entitled to support from the Government when needed to make the project bankable.</p>	<p>to projects on a case-by-case basis. However, the 2020 Investment Law and the PPP Law (both to be effective as from 1 January 2020) no longer contain such provisions. The lack of a basis for GGUs in the 2020 Investment Law and PPP Law may suggest a change in the policy of the Government towards the granting of GGUs to projects. There is no distinction between a large project and a small project.</p>	<p>operational deficits not non-payment by an off-taker. The government should clarify if this is intended to guarantee 75% of an off-taker's payment obligations.</p>	<p>the lack of a specific reference to GGUs in the laws does not mean that there would be no more GGUs in the future. Instead, the granting of the GGU would depend on the specific project and how the Government views the importance of the project to the economic development of Vietnam.</p> <p>If this is the official position, the Government should clarify its position, so that developers are not deterred before they start. Such a guarantee could perhaps still be issued based on the Prime Minister's implied powers. According to the 2015 Law on Organisation of the Government, the Prime Minister has the power to (i) lead and direct formulation strategies, proposals, plans, policies and other projects under the decision-making authority of the Government and the Prime Minister; and (ii) direct, regulate and collaborate the operations of the cabinet members; make a decision on dealing with discrepancies between Ministers and Heads of Ministry-level agencies. However, unless the MOJ is willing to give an opinion about such powers or the guarantee, lenders may have doubts about a</p>

Proposition	Impediments	PPP – how to secure greater capital flows	IPP – how to secure greater capital flows
			<p>GGU that has no clear legal basis.</p> <p>The Government or MOJ should clarify if such an opinion might be issued.</p> <p>We would also propose that the Government consider applying the petroleum and refinery precedents, which received guarantees and support from the Government although not in BOT or PPP form. Such treatment was key for the success of those projects in achieving financial close.</p>
<p>3. Foreign currency convertibility and availability protection is needed by non-recourse lenders</p> <p>The only lenders for large projects lend in foreign currency and want to be repaid in foreign currency. This is different from small renewable projects, where local Vietnamese Dong financing might be available. Currencies of the world have been volatile. The Vietnamese Dong has been admirably stable, and financiers recognise the sterling work of the State Bank and Ministry of Finance in achieving such success. Yet when they consider lending money to a project for 15 years, they are nervous about whether such success will continue for ever.</p>	<p>Currently, GGUs have been issued to projects that cover 30% of the net Dong revenue of the Project with a certain level of assistance in respect of the remaining 70%.</p> <p>Under the new PPP Law, a government guarantee of foreign currency availability can be granted on a case-by-case basis (i.e. subject to the specific decision of the Prime Minister) and will be capped at 30% of the net Dong revenue of the project.</p>	<p>1. The revenue deficit sharing mechanism set out in Article 82 of the PPP Law could give protection against FX devaluations if the revenue could be expressed in a foreign currency. This is unlikely to be the intention of the Government, but if it is, the Government should specify the possibility in the implementing decrees.</p> <p>2. Numerous aspects of a guarantee on foreign currency availability should be specified so as to attract capital (such as exchange rate at the time of conversion and the timing of the conversion into and availability of foreign currency).</p> <p>3. Similarly, if there is still a possibility that the Government will agree</p>	<p>Under new the Investment Law, there is no longer a basis for the provision of a guarantee of foreign currency availability. This will pose difficulties in bringing the various LNG-to-power projects to the financing market.</p> <p>If the Government takes the view that it can use implied powers to issue such guarantees on an ad hoc basis, the lenders are likely to ask for some legal opinion from the MOJ to this effect.</p> <p>If no such guarantee is to be issued by the Government, alternatives that could be explored include:</p> <ul style="list-style-type: none"> - whether the FX loss can be built into the tariff to protect

Proposition	Impediments	PPP – how to secure greater capital flows	IPP – how to secure greater capital flows
		to assist in the provision of the remaining 70% of the foreign currency needs, this should be specified.	<p>against convertibility loss; and</p> <ul style="list-style-type: none"> - whether there is some product that could be developed by a multilateral bank that is itself backstopped by the Government.
<p>4. Foreign governing law is a known quantity for foreign banks and will make it easier for them to lend to Vietnamese projects.</p> <p>Using a foreign governing law for a PPP contract is sometimes necessary and in Vietnam's best interests. This is because contracts involving billions of dollars can be complicated and Vietnam does not have all the legal concepts to which the banks are accustomed. Furthermore, English law (for example) has a deep set of legal precedents so bankers know what the contract means with much greater precision if it is governed by English law than Vietnamese law. Investors can therefore be reasonably confident how a court will resolve common disputes. This enables banks to provide financing or to provide it at a lower cost,</p>	<p>No one disputes that Vietnamese law applies to the operations of infrastructure in Vietnam. Power plants and roads in Vietnam cannot do anything else. Currently, the contracts under which they are built and financed can be governed by a non-Vietnamese law. Vietnam is naturally concerned about applying a non-Vietnamese law to a contract relating to important infrastructure in Vietnam. Under the new PPP Law, a PPP project contract, appendices to the contract and other related documents signed between the Vietnamese State agency and the investor/PPP project enterprise shall be governed by the law of Vietnam. There is an ostensible exception (the Lack of Coverage Exception) to the effect that where the law of Vietnam does not have</p>	<p>The decrees implementing the PPP Law should - if possible – attempt to interpret the Lack of Coverage Exception to allow the parties to negotiate whether there is sufficient coverage, and where they agree that there is not, allow them to use Vietnamese or foreign law. Failing that, if Vietnam has a desire for capital, it could consider amending the Law to specify that the parties can negotiate in each specific instance whether to use Vietnamese or foreign law</p>	<p>A Power Purchase Agreement (PPA) in an IPP will have to be governed by Vietnamese law because under the Civil Code of Vietnam, a contract between two Vietnamese companies regarding a transaction fully implemented in Vietnam has to be governed by Vietnamese laws. This will impede these projects from obtaining non-recourse financing. There are a significant number of English contract law concepts which are not clearly defined or even recognized under Vietnamese laws, but which are important to international lenders. Examples would include liquidated damages, indemnity, reasonableness tests, waivers, subrogation</p>

Proposition	Impediments	PPP – how to secure greater capital flows	IPP – how to secure greater capital flows
which in turn saves money for the government.	regulations, the parties may reach specific agreements in the PPP project contract on the basis that they are not contrary to the basic principles of the law of Vietnam. This is not a practical solution. Practice has shown that such a provision would likely cause controversy both in contract negotiation and future implementation of the project because the parties have to agree on which area of the PPP contract has been regulated and which has not been regulated under Vietnamese laws.		of rights, joinder of disputes, and others. These will all need to be resolved one way or another for lenders to have an equivalent level of comfort.
5. A bankable form of PPA will encourage developers to commit more capital.	It appears that future large-scale power projects including LNG-to-power projects are to be implemented as IPPs outside the BOT regime. Currently, all IPPs with capacity of over 30MW have to participate in the wholesale electricity market and must apply the template PPA set out in Circular 56/2014/TT-BCT of MOIT (<i>Circular 56</i>). The MOIT has recently circulated a draft Circular replacing Circular 56 with a new template PPA which (based on the draft released in September 2020) is substantially similar to the one under Circular 56. There are various issues in the template PPA under Circular 56 that will hinder the bankability of large-scale IPPs. There is no provision in the template PPA regarding risk allocation of	All foreign-invested coal and gas-fired power projects in Vietnam to date have been implemented under the BOT/PPP regime. Bankable forms of PPA have been developed for these projects over the years.	The IWG suggests that large-scale LNG-to-power projects be exempt from participating in the wholesale electricity market, and be entitled to fixed competitive tariff. It would also suggest that the Government develop a new template PPA with solid risk allocation provisions acceptable to lenders in international project financing transactions, including provisions to address the impediments mentioned in the columns to the left. The new PPA template should also contemplate arrangements for fuel cost pass-through and take-or-pay responsibility in the PPA resulting from the fuel supply agreement.

Proposition	Impediments	PPP – how to secure greater capital flows	IPP – how to secure greater capital flows
	<p>curtailment risks, deemed commissioning and agreed termination payment. There is no differentiation between consequences of natural and governmental force majeure event, which, according to the template PPA, both excuse the affected party from performance of the relevant obligations and allows either party to terminate the PPA without any compensation if such events last for an extended amount of time. There is no protection from unfavorable changes in laws and unfavorable changes in tax. Also, unless EVN agrees otherwise, disputes must be referred to MOIT whose decision can only be later challenged before competent Vietnamese courts.</p>		<p>The PPA template should also cover a mechanism for lenders' step-in-rights. A PPA with project risks appropriately allocated to the party that is in a position to control them will help reduce the need for a Government guarantee of EVN's payment obligations and allow the sponsors to offer a more competitive tariff.</p>
<p>6. Bank security – the land problem. Land use rights are important assets, which a large-scale power project needs to use to secure financing from international lenders.</p>	<p>By law, land use rights are only allowed to be mortgaged to credit institutions licensed to operate in Vietnam. Since 2015, security over land use rights has been limited to those permitted under the Land Law. This requires a project company to have paid for the land it uses – which runs up against the fact that land is provided free of rent in the first place.</p>	<p>Onshore security agents have been used in practice on an ad hoc basis in BOT projects. However, the legal basis is uncertain, and the State Bank does not approve. If Vietnam wishes to encourage capital flows, it would not be a large sacrifice to allow a foreign lender to take a security interest over land and buildings if an onshore security agent is appointed.</p>	<p>Same as for PPPs. In addition the IWG would suggest that the Government adopt clear procedures and rental tables for leases of sea water areas, which are important for many gas to power projects.</p>

POSITION PAPER OF BANKING WORKING GROUP

SUMMARY OF TECHNICAL ISSUES

Notes:

- A) ISSUES BROUGHT FORWARD FROM 2019 UNDER THE MANDATE OF THE STATE BANK OF VIETNAM AND TO BE FOLLOWED UP IN 2020**
 - A.1.A. ISSUES ADDRESSED BY SBV IN 2020 (OLD ISSUES)**
 - A.1.B. ISSUES ADDRESSED BY SBV IN 2020 (NEW ISSUES)**
 - A.2. ISSUES THAT REQUIRE BILATERAL COOPERATION BETWEEN THE TWO PARTIES, SBV HAS ACKNOWLEDGED AND WILL TAKE INTO ACCOUNT WHEN AMENDING SBV'S CIRCULARS AND DECREES**
- B) ISSUES THAT RELATE TO THE COMPETENCE AND RESPONSIBILITIES OF OTHER LINE MINISTRIES**
 - B.1 - OLD ISSUES**
 - B.2 - NEW ISSUES**
- C) ISSUES ADDRESSED IN 2020 AND TO BE FOLLOWED UP IN 2021**
 - C.1 - OLD ISSUES**
 - C.2 - NEW ISSUES**

<u>NO.</u>	<u>ISSUE</u>	<u>DESCRIPTION</u>	<u>CONCLUSION & NEXT STEPS</u>
A) ISSUES BROUGHT FORWARD FROM 2019 UNDER THE MANDATE OF THE STATE BANK OF VIETNAM AND TO BE FOLLOWED UP IN 2020			
A.1.A. ISSUES HANDLED BY SBV IN 2020 (OLD ISSUES)			
1.	Circular 18/2018/TT-NHNN on information system security in banking operations	BWG suggest to discuss with the SBV on a number of related issues as follows: a. Definition of important system b. Backup data c. Admin user d. Annual pentest frequency	BWG has contributed comments (twice) on the Draft Amending Circular 18. BWG & SBV continue to work together during and after the issuance

NO.	ISSUE	DESCRIPTION	CONCLUSION & NEXT STEPS
			of the revised Circular.(Circular 09/2020/TT-NHNN on Oct 21, 2020)
2.	CCS to be booked in trading book instead of banking book	<p>According to Circular 40/2018/TT-NHNN revising Circular 13/2018/TT-NHNN, Circular 41/2016 provided the definition of propriety trading <i>“Propriety trading means the purchase, sale, or exchange by commercial banks, foreign bank branches, subsidiaries of commercial banks in compliance with the law with the purposes of purchase, sale, or exchange for a duration of less than one year to obtain profits thanks to market price differences for commercial banks, foreign bank branches from financial instruments, including:.. d) Derivative products;”</i></p> <p>In fact, the interest rate swap derivative transactions between the two currencies usually have a tenor of over 1 year.</p> <p><u>Recommendation:</u> We suggest that the State Bank consider revising this regulation so that derivative transactions with tenor of more than one year are allowed to be recorded in the trading book.</p>	<p>BWG and SBV held a meeting on August 2, 2019.</p> <p>BSA recognized the problem and provided instructions on how to record transactions.</p>
3.	Reimbursement of interest rate subsidies	<p>Over the last years, banks have been waiting for the reimbursement of 20% of due interest subsidies under the interest rate support initiative that ended in 2009. We have actively worked with the SBV and provided relevant data. The State Audit Office of Vietnam has reviewed and concluded the amount with some banks. Following our previous meetings with SBV in late 2012, we note that the figures has been checked and finalized for a number of BWG members. We also understand that this is a complicated matter that may have bearings on the public funding balance sheet and national financial health. However, since the unpaid accumulated reimbursements are</p>	<p>Through a technical meeting on December 16, 2019, BWG has been updated by the SBV about the process of reimbursement of interest rate subsidies. The SBV has been collecting, supplementing and finalizing documents of some credit institutions as well as submitting to the Prime Minister for approval the plan of the total package, in particular the</p>

NO.	ISSUE	DESCRIPTION	CONCLUSION & NEXT STEPS
		presenting themselves as a problem with the banks in relation to their internal accounting systems and audited financial statements, the working group would appreciate if SBV wraps this up and starts releasing this interest rate refund as soon as possible.	<p>difference between the amount of VND and USD.</p> <p>After receiving instructions from the Government, the SBV will proceed to refund.</p>
A.1.B. NEW ISSUES ADDRESSED BY SBV IN 2020 (NEW ISSUES)			
4.	Article 27a, Circular 41/2018/TT-NHNN amending and supplementing a number of articles of Circular 19/2016/TT-NHNN (Circular 41) on compliance with the roadmap for transformation to domestic chip cards	<p>As far as BWG is concerned, the current base standards for domestic chip cards must comply with the international standard EMV v4.2. However, if all ATMs now comply with EMV v4.2 or above (e.g. EMV v4.3), as per Article 27a of Circular 41/2018/TT-NHNN amending and supplementing a number of articles in Circular 41, banks may not have a contract with NAPAS for domestic chip cards to enable cash withdrawal from these ATMs.</p> <p>Please kindly advise if BWG's understanding of Circular 41 as mentioned above is correct or not and give further guidance so that BWG can comply with the law.</p>	BWG received & studied the SBV's response on June 5, 2020 to continue to coordinate and implement appropriately.
5.	Article 27b of Circular 19/2016 / TT-NHNN regulating banking card operations on POS	Circular 41/2018/TT-NHN, article 1.3 & 1.5 and the SBV's OL 1524 dated March 13, 2019 which clearly outline the timeline and the requirements that the cards to be accepted by all ATM by 2020. In particular, SBV plans to have at least 30 per cent of active cards in the country meet domestic chip standards by the end of 2020. The number will rise to 60 per cent by the end of 2021 and all cards by the end of 2022.	BWG received & studied the SBV's response on June 5, 2020 to continue to coordinate and implement appropriately.

NO.	ISSUE	DESCRIPTION	CONCLUSION & NEXT STEPS
	transactions on credit cards	In order to ensure the consistency of data, technical standards, avoid wasting resources, time and costs and minimize possible risks, some BWG members are issuing BIN cards. At home, sent a letter to the SBV reporting on the failure to complete the first phase of the roadmap by December 31, 2019 and is making an effort to promptly convert 60% of the card in circulation to comply with the Mechanical Standard. Domestic chip card department according to the general schedule on December 31, 2020. We respectfully request the SBV for further guidance.	
6.	Loan purpose requirement (Circulars 39/2016/TT-NHNN & 21/2017/TT-NHNN)	<p><u>Quote from official dispatch 200805BWGVBF dated 5/8/2020:</u></p> <p>1. Circular 39/2016/TT-NHNN on lending activity of credit institutions and foreign bank branches to clients</p> <p>Article 22.2 requires that Internal rules on lending of the credit institution shall be implemented in a consistent manner within the entire network of the credit institution and address the following minimum contents:</p> <ul style="list-style-type: none"> - Procedures for inspection and supervision of loan application, use and debt repayment of customers; delegation and assignment of rights and responsibilities to each individual and department for inspection and supervision of loan application, use and debt repayment of customers; - Requirements concerning security for loans, assessment of assets pledged as collateral for loans; management, supervision 	BWG received & studied the SBV's response on September 8, 2020 to continue to coordinate and implement appropriately.

NO.	ISSUE	DESCRIPTION	CONCLUSION & NEXT STEPS
		<p>and monitoring of collateral appropriate to loan security, collateral features and customers;</p> <p>Article 32 stipulates that <i>credit institution shall keep loan documentation including report on income generated by the customer during the loan term under the credit institution's instructions.</i></p> <p>Our challenges / challenges for some of the following:</p> <ul style="list-style-type: none"> - post disbursement monitoring on client level periodically - For retail banking in many global banks, loan performance is monitored on the portfolio scale and portfolio movement is reviewed on weekly/biweekly meeting. Early sign of delinquent accounts is alerted and tracked on daily basis by collection system upon various buckets which have different treatments upon each bucket. - In compliance with the regulation, credit institutions in Vietnam proactively design and apply different methods to check loan purpose and manage their loan portfolio. These may include taking client self-declaration through application, document checking, call back, client visit, collateral revaluation after disbursement dependent on loan exposure or client segment. - For personal loan with low value credit facility for consumption purpose, clients may have difficulty in obtaining document of loan purpose and hence credit institutions apply a risk-based approach to comply with this requirement. 	

NO.	ISSUE	DESCRIPTION	CONCLUSION & NEXT STEPS
		<p>Recommendation:</p> <p>For personal loan for consumption purpose, since clients may have difficulties in obtaining loan purpose documents, we appreciate that SBV can be flexible and take customers' declaration through application as consent for loan purpose and banks will apply different methods of verification including call-back, or collateral revaluation, or reassessing of mortgage assets, or site visit, or email reconfirmation after disbursement depends on bank's risk appetite.</p> <p>We appreciate SBV be flexible on controls applied by banks and give further guidance on this.</p> <p>Circular 21/2017/TT-NHNN on disbursement modes</p> <p>Article 4 stipulates that credit institution shall disburse the loan fund into the payment account of the beneficiary at the payment service suppliers, except for the cases that the customer, as a beneficiary, maintains a payment account at the payment service supplier and has already advanced his own capital for payment of the costs of the every business plan, project or the plan for living purpose to which the lending credit institution decides to lend in accordance with laws and regulations.</p> <p>Difficulties & challenges:</p> <ul style="list-style-type: none"> - For loan for personal consumption or house renovation purpose, client may have to make payment to many service suppliers with small amount which causes multiple partial disbursements to many beneficiaries in different times. It is inconvenient for client to monitor goods or service delivery and payment between bank and suppliers. 	

NO.	ISSUE	DESCRIPTION	CONCLUSION & NEXT STEPS
		<p>- Verifying beneficiary accounts declared by clients on application form is also a challenge to banks.</p> <p>We understand there is a similar practice being followed by many banks that both options of disbursing to client and as well as to the beneficiary are offered to clients. However, most of clients choose to get disbursal in their own account and make payment by credit card or cash at their own convenience. Banks take confirmation and/or supporting documents from the client on the loan purpose.</p> <p><u>Recommendation to SBV:</u> Allow disburse to client accounts for loans for personal consumption or house renovation purpose and control by loan purpose document checking or other controls as applied by the banks.</p>	
7.	Official Letter No. 6410/NHNN-TT dated August 16, 2019 on regulations for the Card issuer	<p>As for the Card issuers, banks have no direct relationship or control authority over the Merchants. Therefore, banks cannot report to the SBV in the event of detecting merchants' mistakes. In addition, banks cannot notify Acquirers given the lack of Acquirers' information. According to BWG, this reporting responsibility should rest with the Acquirers.</p> <p>With operational measures, Card Issuers will review transactions on credit cards. In the event of detecting suspicious transactions, the bank will freeze customer's card transaction and/or close the customer's account while notifying the SBV and the card switching organization.</p>	BWG received & studied the SBV's response on June 5, 2020 to continue to coordinate and implement appropriately.

NO.	ISSUE	DESCRIPTION	CONCLUSION & NEXT STEPS
8.	Import of OTP Token	<p>Relevant legal documents: Decision 630 / NH-NN, Decree 58/2016 / ND-CP, Law on cyberinformation security 86/2015 / QH3, Article 34.</p> <p>We would like to request Customs authority to let bank continue importing Advanced OTP Token, which is to protect the security of internet banking system as pursuant to regulations of the State Bank Vietnam.</p>	<p>BWG received & studied responses from the SBV (July 8, 2020) & the General Department of Customs (“GDC”), in which both the SBV and the GDC proposed to comply with the current regulations. GDC suggested BWG work more with the Government Cipher Committee and the State Bank proposed BWG to work more with GDC.</p>
9.	Circular 22/2019/TT-NHNN	<p>On February 4, 2020, BWG sent some comments and asked for guidance from the SBV in compliance with the implementation of some points of Circular 22/2019 / TT-NHNN as follows:</p> <p>(i) the method of calculating undistributed profits for the calculation of the individual equity of the banking industry and of foreign bank branches; (ii) composition of total outstanding credit; (iii) reporting on undisbursed loan limits; (iv) request for approval in some cases of credit extension in the definition: “Total outstanding credit, including undisbursed loan limit”; and (v) the definition difference of exchange rate differences between reported in Circular 10/2014 / TT-NHNN dated 20/03/2014 and Circular 22/2019 / TT-NHNN dated 15 / 11/2019.</p>	<p>BWG received & studied the SBV's response & guidance on April 6, 2020 to continue to coordinate and implement appropriately.</p>
10.	OL 2049BWGVBF and 20420BWGVBF on some issues of the covid-19 epidemic and	<p>1. About VND liquidity</p> <p>Concerned about issues such as: VND liquidity will deteriorate if the market continues to be tightened, the increase in USD cash withdrawal together with the phenomenon of restricting flights to Vietnam to supply money makes buying USD timely market is also an obstacle.</p>	<p>BWG received & studied the SBV's response on June 23, 2020 to continue to coordinate and implement appropriately.</p>

NO.	ISSUE	DESCRIPTION	CONCLUSION & NEXT STEPS
	Directive 02 / CT-NHNN on urgent solutions of the banking sector to strengthen prevention, combat and overcoming difficulties caused by the impact of the covid-19 epidemic	<p>2. Regarding banking operations in the context of Covid-19 epidemic State Bank of Vietnam (SBV) guidance on “essential” banking services and whether banks may choose to close a few branches in order to keep resources focused on existing branches.</p> <p>3. Regarding the dividend payment as directed in Directive No. 02 / CT-NHNN The State Bank’s guidance confirms the point 5, section IV of Directive No. 02 / CT-NHNN dated 31/3/2020 requires credit institutions (CIs) to limit dividends: this requirement is not applicable to domestic banks & foreign bank branches in Vietnam.</p> <p>4. About trading on digital platforms The State Bank should consider having guidance related to digital transactions, such as: e-KYC, electronic signature (e-signature) ...</p>	
11.	Draft circular replacing circular 22/2018/TT-NHNN	BWG provided comments as follows: Article 1. Clause 2 Article 3 is amended and supplemented as follows: "2. Documents of credit institutions, foreign bank branches requesting the State Bank to approve the tentative list of personnel: a) For a credit institution, it is a document of the Board of Directors, Members' Council proposing the State Bank. ” BWG recommends: <ul style="list-style-type: none"> • Continue to allow the General Director of the CI, the legal representative or the authorized representative of the General Director to sign the document and send it to the SBV. 	SBV issued Circular 13/2020 / TT-NHNN amending Circular 22/2018 / TT-NHNN dated November 13, 2020.

NO.	ISSUE	DESCRIPTION	CONCLUSION & NEXT STEPS
		<ul style="list-style-type: none"> • Supplementing a regulation allowing the Board of Directors / Board of Directors of the CIs or its authorized representative to sign the document and send it to the State Bank of Vietnam. <p>At the same time, the proposal to add a person appointed by the Board of Directors or Members' Council is entitled to sign this proposal.</p>	
A.2. ISSUES THAT REQUIRE BILATERAL COOPERATION BETWEEN THE TWO PARTIES, SBV HAS ACKNOWLEDGED AND WILL TAKE INTO ACCOUNT WHEN AMENDING SBV'S CIRCULARS AND DECREES			
12.	Developing a legal framework for cash pooling product:	BWG recommend to develop the legal framework and allow domestic physical cash pooling solution in VND, within a common group of legal entities under the same parent company.	<p>At the technical meeting on November 5, 2019, the SBV listened to BWG's proposal (product characteristics and recommendations). The SBV also noted that the current legal framework does not prohibit, however, according to the recent developments, the banks propose and need the support from the SBV and the Government to formulate and develop relevant legal framework as official guidance to support banks & businesses in particular and the economy in general.</p> <p>The relevant departments will coordinate to report on this proposal. SBV will continue to work with BWG and relevant ministries (if necessary).</p> <p>In 2020, BWG and the State Bank of Vietnam continue to discuss the SBV's concern in terms of technical and state management.</p>

NO.	ISSUE	DESCRIPTION	CONCLUSION & NEXT STEPS
			<p>BWG is working to share and provide document related to international practice documents, focusing on the experiences of some countries with similar regulations to Vietnam (e.g. China: experiences and specific Chinese regulations in the initial opening to the development of that product.)</p> <p>Based on a review of the documents, BWG & SBV will consider holding a scheduled meeting in Q4 / 2020.</p>
13.	FWD can be settled at mark to market value at point of pre-delivery or extension	It is recommended to authorize FX SWAP trading and/or Mark to Market re-valuation between the bank and the customer upon prior termination or renewal of FX FWD transactions.	Post the technical and high-level correspondences in 2019, this issue has been acknowledged by the SBV and will continue to be studied when revised.
14.	Underlying transaction for hedging could be a hedging transaction	<p>From the perspective of valid customer demand and large scale of transactions, BWG proposed that the SBV amend the requirements of valid documents to facilitate implementation of derivative products and help customers actively participate in hedging exchange rate and interest rate risks according to Circular 01/2015 / TT-NHNN (“Circular 01”).</p> <p>- According to the provision of Circular 01, Article 7: Legal entities using interest rate derivative products are to prevent and limit interest rate risks for their original transactions. Instead of just using merely the original derivative contract as the basis for</p>	Post the technical and high-level correspondences in 2019, this issue has been acknowledged by the SBV and will continue to be studied when revised.

NO.	ISSUE	DESCRIPTION	CONCLUSION & NEXT STEPS
		the second CCS, customers may use both their original loan contract along with the IS they did to hedge interest rates, as a basis for hedging exchange rate of both principal and interest. We would like to ask for SBV's comments on this approach.	
15.	Circular 24/2016/TT-NHNN on amendment and supplement to a number of articles of circular no. 42/2011/TT-NHNN on grant of syndicated loans to clients by credit institutions	<p>The SBV's Circular 42/24 stipulated that to be able to act as some appointed agent roles (security agent/security asset agent, facility agent/credit extension agent, etc.), such a member must be a lender/credit provider (credit granting member). In fact, as per international practice, those agent roles can be played by a separate party jointly appointed by lenders, not necessary to be one of the lenders. Even some credit institutions are specialized in providing those services for lenders in a syndication.</p> <p>BWG suggest amendment to facilitate further arrangement of syndication transaction in Vietnam for big projects for which financing requirements exceed either Single Borrowing limit ("SBL") or appetite of a single bank.</p>	<p>SBV and BWG held a meeting on December 17, 2019 to discuss details. The SBV listened to BWG's proposal and acknowledged the actual needs of the market and the difference between current regulations and international practices for syndicated loans.</p> <p>The SBV advocates for changes that are in line with international practices and facilitates market expansion. The SBV will conduct internal consultations and survey banks' opinions, based on which amendments to the relevant legal provisions will be considered.</p>
16.	Circular 52/2018/TT-NHNN prescribing credit rating of credit institutions and foreign bank branches	<p>According to Circular 52/2018/TT-NHNN regulating the rating of credit institutions and foreign bank branches:</p> <p><i>"Article 23. Ranking result management</i> <i>1. Credit institutions and foreign bank branches are not allowed to provide rating results to third parties (including parent banks of foreign bank branches) in any form."</i></p>	<p>At the meeting on December 16, 2019, the SBV explained further about the ranking criteria mentioned in Circular 52 and based on these criteria, the banks can perform assessment and calculate the ranking by themselves. Banks may officially share with third parties information regarding the</p>

NO.	ISSUE	DESCRIPTION	CONCLUSION & NEXT STEPS
		<p>We have referenced and studied regional practices (e.g. Monetary Authority of Singapore - "MAS") allows sharing of annual ratings with the parent bank (Head office), but not with branches in other countries. Or in Malaysia, foreign banks are allowed to share risk rating with parent bank and regional office; there are no restrictions to this sharing in the Philippines and Indonesia.</p> <p>Besides, pursuant to Clause 9, Article 4 of the Law on Credit Institutions:</p> <p><i>“Foreign bank branch means a foreign bank's subsidiary without legal entity status and the foreign bank is liable for all of the branch's obligations and commitments in Vietnam.”</i></p> <p>A branch is a dependent unit, so it is subject to the strict control and management of the parent bank while complying with the parent bank's business directions and plans. Therefore, the parent bank needs to know the rating results of the branch to promptly adjust the management practice and improve the quality of capital, assets, governance, liquidity and business operations as required and expected by the SBV while improving the branch's rating. So we believe it is essential for our banks to share the risk rating results from the SBV with the parent bank.</p> <p>Furthermore, information on this rating can also be shared between the State Bank of Vietnam and the parent bank's local regulatory authority as part of an agreement between the two regulators. The parent bank may be perceived as failing to closely oversee the subsidiary if they do not know the ratings of the subsidiary while their regulator is aware of this information.</p>	<p>criteria and the ranking method, except the ranking results.</p> <p>The SBV noted the banks' implementation difficulties and the BWG's proposal to share the ranking results with third parties (including the parent bank of foreign bank branches) and will continue to study further on international commitments and feasible solutions in the future.</p> <p>BWG & SBV continue to coordinate and research when there are plans to amend and supplement Circular 52 is added in accordance with the law.</p>

NO.	ISSUE	DESCRIPTION	CONCLUSION & NEXT STEPS
		<p>If the SBV is concerned about confidentiality, parent banks may sign a Non-disclosure agreement (NDA) undertaking that they will not disclose to any other parties about this rating (if necessary).</p> <p>Recommendation: We sincerely hope that SBV will allow credit institutions and foreign bank branches to share rating results with the parent bank's leaders and relevant functions to ensure close and strict supervision over the branches. The Branch and the Parent Bank will have to ensure confidentiality of the rating results and not provide to other third parties without the approval of the SBV.</p>	
B) ISSUES THAT RELATE TO THE COMPETENCE AND RESPONSIBILITIES OF OTHER LINE MINISTRIES			
B.1 - OLD ISSUES			
17.	Close-out netting in derivative transactions	BWG proposed SBV to allow Close-out netting in derivative transactions.	BWG & SBV continue to study and aim to organize seminars on netting, expected in 2021.
18.	Requirement on chief accountant's signature on operating bank account.	- Regarding this issue, there have been a number of meetings between BWG and Department of Settlement, SBV, and Ministry of Finance. The origin of this issue is the Law on Accounting and SBV's Decision No. 1789 in 2005. Before, banks have not met with a lot of difficulties in implementing this decision because transactions were paper-based. Yet the online transaction systems have been well developed, with 2 groups of signatures: those of the legal representatives and chief accountants and authorized representatives, thus the requirements set out in this decision is no longer practical for banks' operations. For example, on SBV's CITAD system, only	<p>- BWG raised the issue at the Mid-term VBF 2019.</p> <p>- The BWG to work with the Ministry of Finance and further coordinate with SBV.</p>

NO.	ISSUE	DESCRIPTION	CONCLUSION & NEXT STEPS
		<p>one person can now log in to approve the transactions and send the payment orders, and approval of both groups is not required. Some banks have developed the mechanism for granting ID as well as password for customers to assign an authorized person to carry out the transactions. Yet, due to the barriers in Law on Accounting and Decision No. 1789, banks face with compliance risk, because when customers use a bank's payment system, both they and the bank cannot prove both groups of signatures as required.</p> <p>According to discussion between BWG and the Ministry of Finance, the latter agreed that these requirements were developed based on paper transactions and were no longer appropriate with the current e-transactions.</p> <p>Recommendation: With experience in development of e-banking systems in parent banks in developed countries, BWG would like to further work with functional entities under SBV and support SBV in the drafting and revising the relevant laws, and developing a legal system for conduction of e-transactions in Vietnam - such as the revision of Decision 1789 to be in line with the current development status of e-banking.</p>	
19.	E-signature	Following the technical discussions on November 13, 2019 and the high-level meeting on January 9, 2020, BWG would like to seek further guidance from the SBV's IT Department on the criteria of digital signatures / digital signatures. According to international practice in current countries, the process of applying electronic signature always follows the basic process / specific instructions of the authorities (Standard electronic signature - SEF). Example: The UK / US has had its own	Following the technical discussions in 2019, BWG & SBV held a meeting on September 30, 2020 on e-signature (with the IT Department, Legal Department, Payment Department) to discuss further details about pending issues and related circulars/regulations.

NO.	ISSUE	DESCRIPTION	CONCLUSION & NEXT STEPS
		<p>electronic signature guidance (e-signature guidance / Federal commercial acts - like some of the following references:</p> <p>UETA - uniform electronic transactions Act¹</p> <p>ESIGN - federal electronic signature in global and national E-commerce Act²</p> <p>EU³</p>	<p>BWG continues to discuss this issue at the VBF Forum, proposing the Government to direct the Ministry of Information & Communications to coordinate with the SBV and authorize the SBV to provide specific guidance to the banking sector with regard to this issue based on the risk profile of different banking transactions.</p>
B.2 – NEW ISSUES			
20.	Retrospective Application of VAT on L/C	Retrospective Application of VAT on L/C	<p>BWG has sent Official Letter No. 200429–BWGVBF dated April 29, 2020 to the Prime Minister on this issue.</p> <p>The Prime Minister's Office responded to Official Letter No. 4945/VPCP-KTTH dated June 19, 2020 and assigned the SBV to work with the Ministry of Finance; then the State Bank of Vietnam has sent Official Letter No. 5496/NHNN-TD dated July 30, 2020 to the Ministry of Finance</p> <p>BWG looks forward to further working with the Ministry of Finance. Since this</p>

¹ <https://www.uniformlaws.org/committees/community-home/librarydocuments?communitykey=2c04b76c-2b7d-4399-977e-d5876ba7e034&tab=librarydocuments&LibraryFolderKey=&DefaultView=>

² <https://www.govinfo.gov/content/pkg/PLAW-106publ229/pdf/PLAW-106publ229.pdf>

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0910&from=E>
https://www.etsi.org/deliver/etsi_en/319400_319499/31941102/02.00.06_20/en_31941102v020006a.pdf

NO.	ISSUE	DESCRIPTION	CONCLUSION & NEXT STEPS
			is a common problem for the banking sector, BWG will cooperate with VNBA and join the meeting with the Ministry of Finance to discuss details and solutions for the banking sector.
21.	Law on Tax Administration	<p>1. Clause 3 Article 27 provides for the duties and powers of a commercial bank:</p> <p><i>“3. Deduct and pay tax in compliance with provisions on taxation of overseas organizations and individuals whose e-commerce activities generate income in Vietnam.”</i></p> <p>The Law on Tax Administration stipulates that the Government will elaborate guidance on this. BWG proposes that the Government provide further guidance that the deduction and payment can be made by the commercial bank at the request of the tax authority or as authorized by an overseas organization or individual engaged in e-commerce and earning income from Vietnam on a case-by-case basis withand the specific amount of tax payable because banks cannot play a role in deciding who should pay taxes or how much. Disputes and risks may arise to the bank in performing this role.</p> <p>2. Clause 4, Article 35 stipulates that:</p> <p><i>“4. Commercial banks and other credit institutions must include TINs in the taxpayers’ applications for opening accounts and in records of transactions via accounts.”</i></p> <p>BWG recommends that the Government provide further guidance that this requirement applies only to tax payment accounts and transactions, not to all accounts and other banking</p>	<p>BWG has sent official letter 200820BWGVBF dated August 20, 2020 to the Ministry of Finance. At the meeting between VBF & MOF/GDT on November 25, 2020, MOF/GDT have provided some guidances on this issue. We look forward to further working with MOF.</p>

NO.	ISSUE	DESCRIPTION	CONCLUSION & NEXT STEPS
		<p>transactions. Applying these requirements to all banking accounts and transactions will require collecting tax information of all customers, and modifying processes and systems for recording and extracting information related to complicated documents, which is highly time consuming.</p>	
22.	<p>Value-added taxes (VAT) applicable to services provided to processing enterprises.</p>	<p>VAT of 0% applies to banking services provided to export processing enterprises satisfying eligibility conditions under current tax regulations (specified in Article 9.1, Circular 219/2013/TT-BTC dated December 31, 2013) and is not included in the list of cases ineligible for 0% VAT.</p> <p>However, BWG members are required to pay 10% VAT on banking service fees provided to export processing businesses (including remittance fee, collection fee, L/C processing fee) for the past period from 2013 to 2018 because the tax inspection team held the opinion that this service is performed in Vietnam (outside the export processing zones and non-tariff zones) so it is not acceptable to file this service under 0% tax rate line under the provisions of Clause 1, Article 6, Chapter 2 of Government Decree No. 123/2008/ND-CP dated December 8, 2008 (effective from 2009 to 2013) and Clause 1, Article 6, Chapter 2 Decree No. 209/2013/ND-CP dated December 18, 2013 of the Government (effective from 2014 to 2018).</p> <p>BWG respectfully requests the Tax Authority to confirm that the 0% VAT rate applicable to banking services provided to export processing enterprises can be applied in accordance with Vietnam's current VAT regulations.</p>	<p>BWG has sent official letter 200616BWGVBF dated June 16, 2020 to the Ministry of Finance and looks forward to receiving official responses from the Ministry of Finance for further collaboration</p>

NO.	ISSUE	DESCRIPTION	CONCLUSION & NEXT STEPS
		BWG also respectfully requests the Ministry of Finance/General Department of Taxation to consider and confirm the understanding/interpretation of the tax calculations for services provided by the Centers to the affiliated parties according to Official Letter 200616BWGVBF	
23.	E-invoice	<p>BWG has sent Official Letter No. 200918BWGVBF to the Ministry of Finance asking for guidance on the following issues:</p> <ul style="list-style-type: none"> • Mandatory time to start applying e-invoices • Transfer e-invoice data directly to tax authorities • Time to issue e-invoices • Specific guidance on invoice issuance for some unique bank products 	BWG looks forward to receiving feedback from the Ministry of Finance for further coordination.
24.	Decree 26/2020/ND-CP detailing a number of articles of the Law on State Secrets	BWG has sent some comments and requests for guidance from the SBV regarding the implementation of Decree No. 26/2020/ND-CP and Decision No. 45/2007/QD-NHNN. (September 2020).	<p>BWG received a response from the State Bank of Vietnam on September 30, 2020.</p> <p>SBV and the Ministry of Public Security are working on this issue. BWG will continue to collaborate based on the results of the interministerial discussions.</p>
C) ISSUES ADDRESSED IN 2020 AND TO BE FOLLOWED UP IN 2021			
C.1 - OLD ISSUES			
25.	eKYC	1. BWG proposes some new methods to perform these 2 steps based on the application of modern and secure technologies such as eKYC through video calls, using third party services to verify customer identity, give opportunity for customers to upload photos of ID/passport, and supporting documents related to KYC on mobile application.	SBV has just issued the circular Circular 16/2020/TT-NHNN guiding the opening and use of payment accounts at payment service suppliers allowing the application of electronic customer verification (e-KYC) in opening payment accounts.

NO.	ISSUE	DESCRIPTION	CONCLUSION & NEXT STEPS
		<p>We believe that both the customers and the bank are protected, because the authenticity of the transaction is guaranteed, and the basic procedures of opening an account are fully guaranteed.</p> <p>2. Signature on account opening application form:</p> <p>Traditionally, to confirm a transaction between a bank and a customer, a customer is required to sign manually (wet signature). However, with the evolution of technology, there are different ways to confirm a transaction between two parties that we offer instead:</p> <ul style="list-style-type: none"> - Customers can sign directly on the bank's application (on mobile phones) - Customers take a photo of their signature and post/send it to the bank via a secure link - Customers fill out an online application with a check box granting permission to the bank and agree with OTP authentication code - Customers can download the form online, sign, scan and send back to the bank - Customers can provide their signature via DocuSign (encrypted documents and trackable audit trail/operation history are maintained). <p>With the application of modern technology to minimize risks, the Banking Working Group looks forward to receiving comments from the State Bank of Vietnam to discuss further the feasibility of this proposal.</p>	<p>BWG & SBV will continue to coordinate in the implementation process of related documents.</p>

NO.	ISSUE	DESCRIPTION	CONCLUSION & NEXT STEPS
26.	Decree 87/2019/ND-CP and Circular 20/2019/TT-NHNN on anti-money laundering (AML)	BWG recommends discussing with the SBV on AML-related issues.	BWG has engaged in two rounds of consultation and worked with the Anti-Money Laundering Department - SBV.
C.2 – NEW ISSUES			
27.	Official Letter No. 830/TTGSNH11 dated May 27, 2019 regarding websites with suspected signs of gambling/betting by the Banking Supervision Agency. Official Letter No. 1080/NHNN-TT dated February 21, 2020 regarding strengthening measures to ensure security and safety of payment services, payment intermediary	<u>Extract from Official Letters: 200824BWGVBF dated August 24, 2020:</u> The above documents have provided a number of lists containing about 330 websites alerted to provide online gambling/betting services with signs of legal violation and unlicensed video games. These websites may be active and/or shut down and/or only active at certain times. Banks are required to: <ol style="list-style-type: none"> 1. Strengthen inspection, monitoring and prevention of illegal transactions; 2. Regularly monitor and update the list of websites and applications showing signs of violation as stated in Clause 1, Article 11 of Circular No. 24/2014/TT-BTTTT dated December 29, 2014 at websites of the Ministry of Information and Communications https://www.mic.gov.vn/; and 3. Report to competent state agencies (such as Anti-Money Laundering Department; Police Department of peripheral/urban Districts or Province, City). I. Difficulties in fulfilling requests in the Official Letters:	BWG received & reviewed responses from the State Bank of Vietnam on September 28, 2020 for further collaboration in the course of implementation.

NO.	ISSUE	DESCRIPTION	CONCLUSION & NEXT STEPS
	<p>services, by the Payment Department.</p> <p>Official Letter No. 233/NHNN-QLNH dated March 26, 2020 on strengthening the review of transactions related to illegal outward remittance transfers, by the Department of Foreign Exchange.</p> <p>Official Letter No. 551/TTGSNH5 dated May 14, 2020 regarding websites with suspected signs of legal violations by the Banking Supervision Agency.</p> <p>Official Letter No. 585/NHNN-TT dated August 10,</p>	<p>1. Lack of information of beneficiary or merchant 2. Inability to control transaction based on payment content 3. Absence of specific guidance on the website of the Ministry of Information and Communications</p> <p>4. Recommendation:</p> <p>- For banks that do not provide online card payment acceptance services or provide a card accepting machine (POS machine), the Bank only checks once to ensure that accounts are not opened for individuals or organizations whose identification information is listed in the above Official Letters. For websites that do not have the complete identification information of beneficiaries or operators, we will not be able to check due to lack of information.</p> <p>- For banks that provide online card payment acceptance services or provide card-accepting machines (POS machines), we will ask customers to commit not to provide services to legal violating individuals/organizations. However, since some documents are marked as Confidential, we cannot provide detailed information.</p> <p>II. More guidance is needed on preventing other illegal transactions</p> <p>BWG also hope to receive further guidance and support from the State Bank of Vietnam in detecting and preventing not only gambling and betting but also other illegal transactions in the card payment domain (electronic currency trading, gambling and forex trading, etc.)</p>	

NO.	ISSUE	DESCRIPTION	CONCLUSION & NEXT STEPS
	2020 regarding payment for unlicensed online games in Vietnam, by the Payment Department.	We would like to emphasize the important role of the SBV and the Payment Network in this fight against crime.	
28.	Draft Circular amending Circular 01/2020/TT-NHNN	<p>BWG recommends the following:</p> <p>(1) With regard to the amendment in Articles 4, 5 and 6, our member banks are (or will) expand support programs to customers with loans disbursed during the period from January 23, 2020 to before April 25, 2020 and past due during this period as specified in the content to be revised. At the same time, banks will maintain the debt group when restructuring according to Circular 01.</p> <p>When a debt structured under Circular 01 is overdue or continues to be restructured outside the scope of Circular 01, banks will carry out debt classification and risk provisioning according to Circular 02/2013/TT-NHNN. However, the restructuring times according to Circular 01 will not be taken into account cumulatively for debt classification under Circular 02 (considered unstructured prior to the commencement of the classification under Circular 02).</p> <p>(2) Member banks also proposed to expand the Circular's scope of application, allowing to restructure the repayment term for credit card debt.</p> <p>We would also ask CIC to send and share the list of customers supported under Circular 01 by credit institutions and foreign bank branches (similar to CIC's notice of the highest debt</p>	<p>The SBV and the Ministry of Finance are coordinating on the Draft Circular amending Circular 01.</p> <p>BWG received & reviewed responses from the State Bank of Vietnam on September 28, 2020 for further collaboration in the course of implementation.</p>

NO.	ISSUE	DESCRIPTION	CONCLUSION & NEXT STEPS
		group to banks) so that banks are well informed when it comes to appraising & evaluating new credits.	
29.	Draft Circular replacing Circular No. 15/2015/TT-NHNN	BWG has provided some comments and recommendations related to the above Draft.	BWG received & reviewed responses from the State Bank of Vietnam on September 28, 2020 for further collaboration in the course of implementation.
30.	Draft Circular amending Circular No. 23/2014/TT-NHNN	BWG has sent some comments and requests for guidance from the SBV regarding the Draft Circular amending Circular 23/2014/TT-NHNN dated June 1, 2020.	BWG received a response from the State Bank of Vietnam on July 8, 2020. BWG & SBV will continue to cooperate in the course of drafting the Circular.

POSITION PAPER OF CAPITAL MARKETS WORKING GROUP

Prepared by
VBF Capital Markets WG

1. **Business lines with no foreign ownership limit:** For business lines in which international treaties/applicable laws do not limit foreign ownership, it is proposed to apply the foreign ownership ratio of 100%, compared with the current threshold of 49%.
2. **Authority to decide the foreign ownership limit of a company:** It is proposed that companies are allowed to determine/limit the maximum foreign ownership ratio in their Charter.
3. **Conditions for an economic entity to be considered as a foreign investor:** An economic entity is treated as a foreign investor only when it (i) *has over 50% of foreign ownership for at least 180 days in a year* and (ii) *has 35% of its charter capital owned by a foreign investor and related persons*.
4. **Exception for securities companies and fund management companies:** A securities company, when providing securities services and a fund management company, when managing investment portfolios are not considered "foreign investors", regardless of whether the securities company or the fund management company has foreign ownership ratio greater than or less than 50%.
5. **Non-voting Depository Receipt ("NVDR"):** It is proposed to provide regulations to implement NVDR.
6. **Promoting the equitization of State-owned enterprises:** It is necessary to step up the equitization of State-owned enterprises in those industries and sectors which do not require special control by the State to increase the number of shares circulating in the market.
7. **Increasing foreign ownership in banks:** Allow to raise the foreign ownership limit to a new threshold (e.g.: 40-49%), compared to the current threshold of 30%.
8. **New model for settlement of securities transactions through Central Clearing Counterparty (CCP):**
 - a. **Margin:** removing margin requirements for clearing members, margin requirements applicable to investors should be eliminated or applied pursuant to separate agreements between clearing members and investors (each clearing member can apply a different margin for each investor).
 - b. **Model:**
 - (i) Custodian banks ("CB") act as clearing members: The State Bank of Vietnam amends the regulations to allow custodian banks to perform the function of clearing & settlement for securities transactions, providing loans to foreign investors and setting up provision for risks.
 - (ii) Custodian banks ("CB") do not act as clearing members: cash margin, fund and securities of investors must be handled in the following manner:

(A) investors' accounts opened at CBs Domnibus account of CCP (investors transfer and receive fund - securities directly with CCP, not via clearing members); or

(B) investors' accounts opened at CBs Dinvestors' accounts opened at clearing members Domnibus account of CCP (investors transfer and receive fund/securities via clearing members which must be completed on the transaction day).

c. **Timeline for implementation/transition:** *The CCP model should only be implemented when foreign investors, their service providers and market participants are ready*, at least 06 months after the State Securities Commission ("SSC")/ Vietnam Securities Depository ("VSD") issues the official regulations on CCP.

9. **ETF:** Exemption from the disclosure requirements applicable to ETFs should be extended to (i) *portfolio rebalancing following periodic changes of reference index* and (ii) *related persons of insiders to the ETFs*.

10. **Related parties:** It is proposed to clarify the concept of "control".

11. Bonds:

- Simplifying the procedures for private placement of bonds applicable to both public companies and non-public companies.
- Shortening the time for licensing and listing of bonds offered to the public.
- Developing the trading system of bonds issued under private placement for professional securities investors.
- Removing the restriction on the proportion of 10% investment in bonds applicable to open-end funds.
- Eliminating the distinction between investment in listed bonds issued under public offering and listed bonds issued under private placement applicable to open-end funds.

12. **Professional securities investors:** It is proposed to expand the concept of "professional securities investors" so that holding companies/ Special Purpose Vehicles (SPVs) and securities investors as prescribed by foreign laws can be considered as "professional securities investors" under applicable laws of Vietnam.

13. **Omnibus account:** It is proposed to allow foreign investors to open omnibus account and sub-accounts under the omnibus account for separate investment portfolios.

14. **Omnibus agents for open-end funds** It is proposed to allow omnibus agents to perform the netting of cash transactions and make payment to investors themselves instead of having to make each payment transaction to investor via an account opened at supervisory bank of the fund.

15. **Entrusted depository:** It is proposed to clarify the operating mechanism of "entrusted depository" - an intermediary organization performing securities depository for investors under entrusting contract, including foreign securities depositories, global custodian banks, fund management companies and other organizations approved by the SSC:

- Allocating 02 securities trading codes including 01 for entrusted depository and 01 for foreign investor who is the customer of entrusted depository.
- Foreign investors can convert cash and securities accounts opened at custodian banks to the account system of entrusted depository (when required).

- It is only allowed to open securities trading account in the name of entrusted depository.
- Clearly stipulating the disclosure obligations, foreign ownership limit, voting rights, etc. when foreign investors choose to deposit securities at an entrusted depository.

16. Intraday trading and trading of securities receivable: It is proposed to issue clear regulations on intraday trading and trading of securities receivable, specifically allowing foreign investors to execute these transactions.

17. Using insider information in the due diligence (“DD”) process: It is proposed to establish exceptions for the case where an investor executes transactions after obtaining insider information from the DD process, for example: if the investor has signed a non-disclosure agreement, the investor is restricted from trading for a period of time, information provided to investors has been publicly announced.

18. Securities issuance consultancy: It is proposed that securities companies and law firms are allowed to provide securities consulting services.

19. Conditions for listing on the Stock Exchange: It is proposed to review the provisions in the Law on Securities which require public companies to trade on UPCOM for at least 2 years prior to listing on the Stock Exchange.

20. Listing of FDI enterprises: It is proposed to provide specific guidelines on listing of FDI enterprises.

REPORT ON TAX POLICY ISSUES

Prepared by
Tax and Customs Working Group

I – INVESTMENT ISSUES

1. Inadequacies in the implementation of the regulations regarding Export processing enterprises (“EPE”) according to Decree 82/2018/ND-CP

Issue:

Article 30 Decree 82/2018/ND-CP dated 22/5/2018 (“Decree 82”) regulates that:

*“1. Export processing zones and export processing enterprises shall be subject to regulations applicable to separate customs areas and non-tariff zones, except for particular regulations applicable to non-tariff zones within border gate economic zones. If export processing enterprises may be exempted from applying for the Certificate of investment registration, such exemption shall be specified in their investment registration certificates or written document issued by the competent investment registry. **The investment registry shall be held responsible for gathering opinions from the competent customs authorities on the capability to satisfy conditions of the customs inspection and supervision before issuing the investment registration certificate or confirmation in writing to investors.***

*2. In industrial parks, there may be industrial sub-zones for export processing enterprises. **Export processing zones, export-processing enterprises or industrial parks reserved for export-processing enterprises shall be separated from the outside by fence systems, have gates, entrance and exit doors, and fulfill requirements concerning supervision and control by customs authorities and related functional agencies according to regulations applicable to non-tariff areas and regulations laid down in the legislation on import and export duty.***”

In implementation of the above regulations of Decree 82, when considering licensing for EPEs, the investment authority consults for opinions of the customs authority. However, the customs authority views that ***there are no specific regulations on the satisfaction of conditions for customs inspection, supervision and control of customs authorities and other competent authorities for EPEs; therefore, there are no basis to confirm such condition.*** In addition, in terms of condition that the export processing enterprise must ensure ***separation from the outside territory by a system of fences, gates and doors, and ensure conditions for the inspection, supervision and control of customs authorities and other authorities,*** at the time of applying for the Investment Registration Certificate (“IRC”); ***it is sure that no enterprise meets the conditions*** since it is only after obtaining the IRC that factory construction/rental factory renovation activities are performed to meet the above conditions. In according to this understanding, the EPEs regimes cannot be applied in practice.

Due to the above fact, although the investment authorities issue licenses to the enterprises to operate under the EPE status but usually indicate that enterprises must meet the required conditions in order to be entitle to the incentives regulated for EPEs. Therefore, when the enterprises import the machineries and equipment during the investment period for factory construction, the customs authorities do not allow the application of tax incentives of the EPEs, therefore the enterprises are obligated to pay taxes at the import stage. This creates the financial burdens on the enterprises and impacts the cash flow of the investors.

In addition, while the customs authorities collected VAT at the import stage as above, when the enterprises declare and apply for VAT refund for the investment period with the local tax

authorities, the local tax authorities view that there is no base for VAT refund as per the license the enterprises are the EPEs, so are not subject to VAT.

The above inconsistent treatment by the customs authorities and the tax authorities lead to many difficulties, obstacles for the enterprises, adversely impact the investment environment of Vietnam, increase the burden of administrative procedures and costs and exert detrimental influence on enterprises' activities.

Suggestion

We request the Ministry of Finance to consider amending Decree 82 and related legal documents. Accordingly:

- Future treatment: For EPEs applying for a new investment license: The investment management authority coordinates with the Customs authority to issue investment registration certificate allowing the enterprises to apply the EPE status based on the plan of investment in production and export as well as the enterprises' commitment. EPEs will be responsible for complying with the requirements of legal documents on customs and import and export taxes applicable to non-tariff zones and EPEs. The authorities will apply the "post-check" mechanism to check the implementation/fulfillment of the prescribed requirements of the EPE and will apply the sanctioning mechanism for enterprises' violations.

- Treatment for enterprises whose investment has been licensed:

- (i) For EPEs that have applied EPE status since its establishment and customs authorities have inspected the conditions to apply EPE status: No retrospective collection of tax would be made at the import stage in the period from the date of investment license being granted until the customs authorities perform inspection at the enterprises.
- (ii) For EPEs not entitled to apply EPE status from its establishment until customs authorities certifies its EPE status:
 - Import tax paid at the import stage: shall be refunded in accordance with customs regulations.
 - VAT paid at the import stage and VAT incurred by the EPEs' domestic purchase of goods and services: Allowing the enterprises to declare input VAT incurred during the investment period on VAT return for investment project – Form no. 02/GTGT and refunding VAT for the investment period pursuant to prevailing regulations.

2. Investment protection in case of changes by law

Issue

A foreign-invested enterprise has been licensed for investment since 1999. The Company's investment certificate also specifies the activities which are allowed to perform.

In 2017, there were changes in the specialized regulations relating to business activities licensed on the Investment certificate of the Company. The Government promulgates a Decree, which contains provisions not to allow foreign-invested enterprises to conduct business activities which the Company is conducting under its investment certificate. The new regulations have a great impact on the core business activities of the Company, making the investments in the assets and factories of the Company not recoverable. Even the assets of great value to serve the licensed business had been invested right

before the new regulations cannot be used for the original investment purposes due to the change of law. As a result, the Company suffer great financial losses, especially in the Covid-19 pandemic, difficulties add to difficulties, while investment assets have been wasted because they are not used as their original investment targets.

Business investment policies in Clause 3, Article 4 of the 2005 Investment Law stipulate:

"3. The State recognizes and protects the investors' ownership of assets, invested capital, income and other legitimate rights and interests; recognizes the existence and long-term development of investment activities."

In Article 5 of the 2014 Investment Law as well as Article 5 of the 2020 Investment Law:

"3. The State recognizes and protects ownership rights in assets, invested capital, income and other legitimate rights and interests of investors. "

Clause 1, Article 74 of the 2014 Law on Investment stipulates:

"1. An investor who has been granted an investment certificate or investment certificate before the effective date of this Law may execute an investment project according to the granted investment certificate or investment certificate. "

Clause 1, Article 77 of the 2020 Law on Investment stipulates:

"1. An investor who has been granted an investment license, investment incentive certificate, investment certificate or investment registration certificate before the effective date of this Law may execute an investment project according to this Law. granted investment license, investment incentive certificate, investment certificate, investment registration certificate"

Thus, through the past up to now, the Vietnamese Government has committed to protecting foreign investors' investment in Vietnam. The Government of Vietnam also commits to treat foreign investors in a "fair and satisfactory" manner.

For foreign investors making investments in Vietnam, investment certificate plays a very important role, because this is a commitment of what Vietnam allows investors to do, if they are satisfied business conditions as prescribed. The change of specialized regulations leading to enterprises to completely terminate licensed business activities is contrary to the spirit of investment protection in accordance with the provisions of Vietnamese law.

Suggestion

Respectfully request the Prime Minister to review the specialized legal provisions, creating conditions for foreign investors to continue carrying out business activities that have been licensed on the investment certificate until the expiration of the investment certificate, ensure the right spirit of investment protection, avoid wasting investment resources as well as build confidence of foreign investors in Vietnam.

II – CUSTOMS ISSUES

3. Administrative penalties for violation in multiple customs declarations but were detected at the same time

Issue

Regarding the Customs administrative penalties, the prevailing guidance of Decree 127/2013/ND-CP, amended and supplemented by Decree 45/2016/ND-CP and Official Guidance Letters No. 3824/TCHQ-PC dated 11/6/2019 and 15214/BTC-TCHQ dated 23/10/2014, the penalty assessment process will recognize each declaration as one separate offence (except for the case where submission past the deadline for customs dossier which is allowed for late submission).

Pursuant to Official Letter No. 4899/BTP-QLXLVPHC&TDTHPL dated 20/12/2018, the Ministry of Justice is proposing to the Government Office to only apply aggravating circumstances for multiple offences from the viewpoint conflicting with Article 3 and Article 10 of the Law on Penalties for Administrative Violations:

*“- Point d, Clause 1, Article 3 of the Law prescribes the sanction of **administrative violations**;
- Point b, Clause 1, Article 10 of the Law prescribes that **repeated administrative violations are only an aggravating factor**. This means, if the company commits an act of administrative violation many times, it will only be sanctioned for one act and at the same time sanctioned for the behavior of repeating the administrative offence.”*

Suggestion

Therefore, we would like to propose the National Assembly when amending the Law on Administrative Penalty to clearly state that the repeated administrative violations on the same behavior (for example, wrong HS code on the same item) will only be sanctioned based on the extenuating circumstances as proposed by the Ministry of Justice, as most violation on multiple declarations are unintentional repeated offences. Accordingly, the Decree on administrative penalty in the field of customs will also be amended in favour of enterprises.

4. Suggestion for promoting the development of the mechanic manufacturing and assembly industry in Vietnam

Issue

In recent years, the development of mechanic and electronic industries has always been prioritized and encouraged in the economic development policies of Vietnam Government. However, the fact is that currently, import duty rates of many knock-down parts and equipment are higher than those of completely built units, and therefore, do not help to promote the domestic manufacturing and assembly industries. For example: Clark Material Handling Vietnam is a manufacturing and trading company of forklifts and logistic equipment that has been established in August 2018, and operates 3 factories in Hai Duong province with capacity of producing 6,000 units/per year. Forklifts has import duty of 0%, whereas parts of forklift (electric accumulators, seats for motor vehicles, shaft assembly, etc.) other than those classified in HS code 8431.20 are subject to import duty rates of 5-25%.

Suggestion

In Decision No. 598/QĐ-TTg of the Prime Minister to approve the plan to restructure the industrial sector in the period of 2018 - 2020, extending to 2025, the Ministry of Finance has been assigned the task of "studying and reporting to the Government to consider and adjust the tariff system of materials and equipment for mechanical machinery manufacturing in order to enhance the competitiveness of domestic enterprises". Accordingly, in order to promote the development of mechanical manufacturing and assembly in Vietnam, we propose the National Assembly as well as the Ministry of Finance to review the import tariff and incentives for parts and components of this industry.

As far as we know, the General Department of Customs has handled a similar case by allowing the enterprise to submit the entire list of imported components used for production and assembly to review and process tax refunds after manufacturing is completed (similar to incentive program granted for automotive components under Decree 125/2017/ND-CP). If it is not yet possible to amend the tariff table, we would suggest that the Government and the General Department of

Customs can regulate and expand incentives similar to the import of parts and components to assemble and produce automobiles to other industries which assemble and produce machinery/equipment.

5. Re-declaration of HS codes and tax treatment for the goods applied inaccurate HS codes

Issue

Currently, many enterprises are paying more attention to the HS code classification for their imports in order to apply the correct import duty rate, thereby avoiding tax re-collection in post customs clearance audit, and benefit from the Free trade agreements, in which Vietnam is a signing member.

Therefore, many enterprises have self-reviewed all the HS codes that they currently apply, and from that, found out that a number of HS codes applied did not fit with the nature of the goods. The re-classification of these HS codes could potentially result in that the paid taxes were either overpaid or underpaid for different goods. It is likely that the final outcome is that there are tax arrears that need to be paid to State budget.

These enterprises are willing to re-declare the customs declarations (“CDs”) of which the wrong HS codes were applied to settle their tax obligation. Based on Article 20, Circular 38/2018/TT-BTC, they will have to amend each declaration. However, since the re-declaration process for each CD consumes a significant amount of time and resources of the enterprises, the enterprises would like to have a mechanism to only re-declare once for all CDs that need to be adjusted, and can offset the overpaid and underpaid tax amount under those CDs.

Suggestion

As far as we know, the implementation of one-time declaration is not supported on the electronic customs system, and the automatic offsetting is also not stipulated under the Law on Tax Administration, unless there is a decision on tax imposition from the customs authorities. Accordingly, we propose the National Assembly to amend the Law, and the General Department of Customs to legalize the procedure of one-time declaration, and offset tax responsibilities by rebuilding the electronic customs system for cases where enterprises voluntarily declare the repeated errors on multiple declarations, in order for the enterprises to ensure compliance and reduce administrative burdens.

III – APPLYING “SUBSTANCE OVER FORM” FOR TAX TREATMENT

6. Corporate income tax (“CIT”) deduction for the payment of salary expenses for employees dispatched from Parent Company

Issue

For multinational corporations, to effectively mobilize the resources of experts and managerial personnel, the internal migration of employees within the Group is very popular. Companies with foreign investment in Vietnam often have foreign employees sent by the Parent Company to work with. Accordingly, the cost of salaries, benefits, and mandatory responsible contributions of individuals will normally be paid by the Parent company and received back the actual reimbursement arising from the Subsidiary, excluded any additional. On that basis, the Subsidiary recognizes salary expenses and other related costs for dispatched personnel during the process of being assigned to work in Vietnam. Documents for this reimbursement include:

- Agreement on assigning the experts from the Parent Company to work at the Subsidiary clearly specifies the agreement between the two parties whereby:
 - The parent company will send experts to Vietnam to work at the Subsidiary.
 - Subsidiaries will bear all expenses related to salaries, allowances and compulsory contributions, as well as other remuneration according to the policy.
 - The Parent Company will pay the Subsidiary the salaries or allowances and other compulsory contributions ..., and the Subsidiary is responsible for reimbursing the Parent Company the actual incurred expenses based on the Payment request and relevant documents from the Parent Company.
- Appointment Letter, whereby the Parent Company sends foreign experts to work in Vietnam, clearly states detailed information of the dispatched specialist, working time and remuneration according to relevant policies.
- Reimbursement request and related documents from the Parent Company.

When applying for the Work Permit for experts mentioned above, the Appointment Letter is also a document that the state management agency base on to issue the Work Permit. Additionally, the form of payment and reimbursement above are also consistent with the regulations guiding the accounting system in Vietnam. We acknowledge that the General Department of Taxation also has guidelines for the party that are paid on behalf to be allowed for CIT deduction of the actual expenses incurred during their production process and business activities.

Due to the uncertainty of the policy, many local tax authorities require to present a Labor Contract for the purpose of deducting expenses. However, an expert cannot have labor contract at the same time with both the Parent Company and its Subsidiary in Vietnam.

Suggestions

The Ministry of Finance should provide specific instructions for the local tax authorities to base on the nature of the transaction and consider accepting the Appointment Letter together with the Expert Appointment Agreement as required documents for the enterprise to deduct expenses for this reimbursement.

7. Taxpayers' violation of laws other than tax law (if any) cannot be a criterion for assessing deductible expenses for CIT purposes

Issues

When handling taxation issues, some tax authorities tend to base on a conclusion that an enterprise violates the specialized laws to exclude from the CIT deductible expenses the related expenditure without considering the actual costs incurred with the sufficient supporting documents, or whether or not the expenses directly relate to generating taxable revenue or not.

In our opinion, the exclusion of the expenses from the deductibility for CIT purposes due to violation of the specialized laws is unreasonable and incompatible with the principle and basis of the CIT laws because:

- The laws on corporate income tax only stipulate that: enterprises are allowed to deduct all expenses if they meet the conditions specified in Article 6, Circular 78/2014/TT-BTC of the Ministry of Finance:
Actual expenses arising in relation to production and business activities of enterprises. Expenses with adequate lawful invoices and documents as required by law. There are non- cash payment documents for expenses for purchase of goods or services with invoices valued at VND 20 million or more each time.

Under the Circular, there are no binding conditions to satisfy the regulations of specialized laws.

- In case of specialized law breach, the enterprise has to be subject to fines under the sanction specified for that specialized field and the fines are not recognized for tax purposes. Moreover, in many cases, the violations are due to the objective reasons or due to certain administrative procedures which are difficult to implement in practice.
- The binding of non-tax regulations to assess corporate tax compliance is overlapping, increasing the burden of the enterprises. Other specialized laws have sanctions and the level of penalties already take into account the effect of deterring and preventing violations from recurring. The fact that the tax authorities' exclusion from the deductible expenses of the enterprises will increase the costs of non-compliance, even in many cases, the enterprise will lose business capacity.
- This guidance expands the power of tax officers to assess the reasonableness of expenses, leading to tax authorities not only assessing compliance with tax regulations but also assessing compliance with regulations outside tax. This may lead to the following consequences:
 - Lack of transparency, unpredictable policy: enterprises are unable to anticipate the circumstances their expenses will be excluded even if the expenses have met the deductible prescribed requirements in CIT regulations.
 - Unequal implementation: the requirement to meet the relevant legal requirements is too broad and general. Tax officers do not understand all other specialized laws, so there will be a situation where such excluded expenses in one enterprise may not be excluded similarly in other enterprises since it is subject to subjective judgement of tax officers.

In Official Letter No. 5476 / BTC-CST dated May 7, 2020, responding to Vietnam Business Forum regarding this issue, the Ministry of Finance has guided for the enterprise that have extra expenses for overtime working of employees, for wages and insurance payment of foreign workers or promotional expenses, if they meet the requirements of tax **and relevant laws**, it will be included in deductible expenses when determining taxable income. We found that this reply of the Ministry of Finance is not satisfactory, affecting the interests of the business.

Suggestion

We request the Ministry of Finance to reconsider this issue and instruct the tax collection based on current tax regulations. If the tax treatment requires reference to other specialized regulations, that reference must be clearly codified in the tax regulations. This will ensure a transparent, consistent tax policy environment and create a basis for tax collectors and taxpayers to seriously and equally implement the provisions of the laws.

8. The issues in Circular 48 on provision

Issue 1

Article 4 Circular 48 regulates on provisions for devaluation of inventory as below:

Provisions shall be made for materials, tools, equipment, goods, goods in transit, goods dispatched for sale, goods stored in tax-suspension warehouse, finished goods (hereinafter

referred to as inventory) which have their book original prices are higher than the net realizable value and be guaranteed of conditions.

Unfinished products may be in devaluation as same as other inventories, so a provision for inventory devaluation is still required. According to the old Circular 228, unfinished products are still subject to provision.

Recommendation

We request Ministry of Finance/ General Tax Department consider supplementing, amending Circular 48 that unfinished products are also subject to provision.

Issue 2

Article 1 Circular 48/2019 regulates that:

Scope and regulated entities: Circular 48 is applied for making and handling the provisions “to determine the deductible expenses when determine taxable turnovers as regulated” meanwhile “the making of provisions for the financial statements o business organizations shall comply with law on accounting.”

In practice, the application of the provisions of Circular 48 and the accounting regulations on provisioning may lead to some differences. For example, there are some cases where the accounting laws do not require for provision but subject to provision under Circular 48, or the provisions calculated according to the accounting laws are smaller than the provisions calculated according to the Circular 48, or the provision calculated according to accounting laws is greater than the amount calculated under the provisions of Circular 48.

Recommendation

To be in line with the guidance of Circular 48, we request Ministry of Finance/General Tax Department to regulate clearly that in respect of accounting, in case enterprises do not make provision or make less provision, the enterprises are still subject to apply Circular 48 to determine expenses for calculating CIT.

Issue 3

Pursuant to Article 3.2 Circular 48, the making and reversal of provisions are conducted at the time of making financial statement (at the end of the period).

In fact, there are many fast turnaround goods that need to be destroyed or liquidated in the middle of the period. At that time, the enterprise will not be able to make provisions in accordance with Circular 48.

In addition, on the basis of the actual business situation, it may arise cases where enterprises have to destroy goods without setting up a provision in advance. The destroy of goods is a requirement of production and business activities that no enterprises wants and has actually arisen. Therefore, there should be no requirement that an enterprise must already set up a provision in order for the destroy expenses to be included in taxable expenses for CIT purposes. In common senses, the regulations in the Circular allowing making provision is to create advantages for manufacturing enterprises to have backup sources when they have to destroy goods. Therefore, allowance on actual cost of destroying goods to be recorded for tax calculation purpose, even if there would be

no prior provision in advance, is in line with the tax principle.

Recommendation

We request Ministry of Finance/ General Tax Department to consider and provide guidance in detail on tax settlement for such particular cases. Relevant expenses of goods destroy such as liquidation expense, costs of destroyed goods should be recorded in expenses for CIT calculation purpose in period without being bound by conditions of making provision in advance (in assumption of meeting conditions b), c) stipulated in Article 6.1 Circular 78).

9. Depreciation cost of the machinery which is suspended from production due to Covid

Issues

Are the depreciation costs of the machinery suspended during the period of suspension of operation due to Covid considered reasonable?

Resolution 84 / NQ-CP only stipulates: "*Allow contributions and donations in Covid-19 anti-epidemic activities as reasonable expenses to be deducted when calculating corporate income tax*".

Some local tax authorities (e.g. Hai Phong) responded in writing that the above cost cannot be deducted for the purpose of CIT calculation.

Recommendation

This cost should be considered as deductible expenses incurred from objective reasons. We request the Ministry of Finance /General Tax Department to provide clear guidance on this issue.

10. VAT treatment on transferring of land use right attached with construction works

Issues

Pursuant to provision 4 Article 5 Circular 219/2013/TT-BTC dated 31 December 2013 of Ministry of Finance guiding Law on Value Added Tax and Decree 209/2013/ND-CP dated 18 Decemer 2013, cases not being subject to declare and pay VAT includes: "4. *The entities, individuals that transfer projects of investment for manufacturing or trading goods/services subject to VAT to other companies or cooperatives.*"

According to Article 4 Circular 219/2013/TT-BTC dated 21 December 2013, cases not being subject to VAT include land use right transfer.

In practice, in some enterprises where the investor would like to transfer land use right attached with construction works on land to another investor and implement under process of transferring land attached with construction works. As such, the transferrer shall issue invoice as below:

- Value of land use right: not apply VAT since this activity is not subject to VAT; and
- Value of construction works on land: apply proper VAT rate in accordance with regulations (normally 10%). The transferrer pays output VAT corresponding with revenue of transferring construction works.

When the transferee applied for a refund of input VAT paid for the facility, they were rejected by the Hanoi Tax Department because the tax authority viewed that the above transfer was a project

transfer activity, so it was not subject to VAT declaration and payment, while in fact the actual dossier/procedure of the company are not that as regulated for a project transfer.

From our point of view the way of understanding and applying the above provisions of the tax authorities is of imposing nature and makes difficulties for enterprises, especially when the government had already collected output VAT of transferrer a long time ago.

Recommendation

Since the transferrer already paid output VAT and nature of the transaction as above, we request the Ministry of Finance/General Tax Department to provide guidance to have basis for appropriate settlement for the enterprise and for other similar cases.

11. VAT applied for services provided to EPE

Issues

In accordance with Article 9 Circular 219/2013/TT-BTC dated 31 December 2013, 0% VAT is applied to exported goods and services. Exported services are those that are sold directly to overseas organizations and individuals and are consumed outside Vietnam, sold directly to the entities in free trade zones and are consumed in free trade zones.

Clause 2 Article 1 Circular 130/2016/TT-BTC providing guidelines for Decree 100/2016/ND-CP dated 01 July 2016 also regulates the cases of services provision to enterprises in free trade zone that shall not be subject to 0% VAT.

However, in practice, some local tax authorities interpreted the regulations in the direction of only allowing 0% VAT to apply for services that are provided in the free trade zones. For services provided to an export processing enterprise but location of providing service is outside the free trade zones are still subject to 10% VAT as it is considered to be consumed outside the free trade zone, even though the service serves for production and business activities of export processing enterprises and is not included in the scope of services not being subject to 0% VAT mentioned above.

From our point of view, the services provided to EPEs to serve for manufacturing products for sale should be understood as being consumed by EPEs. Therefore, even if the services are provided outside the free trade zone, these services should be entitled to 0% VAT.

The application of the 10% tax rate for the above services makes the above provisions less meaningful, arising a cost burden for EPEs, causing difficulties for enterprises.

Recommendation

We suggest the Ministry of Finance/General Tax Department to consider guiding clearly the above issue, make sure the uniform and fair application for enterprises. Specifically, services provided to an enterprise in a free trade zone (including EPEs) for manufacturing products for sale by the enterprises, which are not included in the services specified in clause 2 Article 1 of Circular No. 130/2016 / TT-BTC above, should be subject to 0% tax rate.

12. Foreign exchange rate for billing and exchange rate for accounting

Issues

Circular 39/2014/TT-BTC on invoices stipulates that the invoice issuing FX rate is: the FX to state in the invoice is “*exchange rate against VND is based on the average exchange rate of inter-bank foreign exchange market announced by the State bank of Vietnam at the time the invoice is issued. If the foreign currency collected does not have an exchange rate with Vietnamese Dong, an exchange rate between that currency and another foreign currency of which the exchange rate is announced by the State bank of Vietnam shall be written*”.

Circular 26/2015/TT-BTC regulating the accounting foreign exchange rate: “*If there are revenues, expenditures, taxable prices in foreign currencies, they must be converted into Vietnamese Dong at the actual transactional foreign exchange rates according to instructions of the Ministry of Finance in Circular No. 200/2014/TT-BTC dated December 22, 2014 providing guidance on corporate accounting system:*

- *The actual transactional foreign exchange rate for recording revenue is the buying rate announced by the commercial bank where the taxpayer’s account is opened. ...*”

Thus, there is a difference in the exchange rate for invoice issuance and the exchange rate for recording in the enterprise's accounting books. Meanwhile, the invoice is also an accounting and tax document which serves the accounting records.

Recommendation

We request that the Ministry of Finance to consider amending Circular 39/2014/TT-BTC, accordingly the invoice issuance FX rate is identical to the revenue recognition FX rate (the buying rate of commercial banks).

13. Foreign exchange for Foreign contractor tax calculation

Issues

Currently, there are official letters of the General Tax Department guiding the exchange rate for calculating foreign contractor tax as follows:

- Official Letter 2049/TCT-CS of TCT dated May 28, 2018 providing general guidance which implies that the purchase exchange rate of the commercial bank where the Vietnamese party opens the bank account is applied, as this is the revenue of the foreign contractor.
- Official Letter 2586/TCT-CS dated June 28, 2018 of TCT guiding the application of the selling rate of commercial banks of the Vietnamese party that pays tax on behalf of the contractor.
- Official Letter 3720/TCT-CS dated October 1, 2018 providing similar guidance as that in the Official letter 2049/TCT-CS.
- In fact, many tax offices are requiring the enterprises to apply the selling exchange rates of the commercial banks for calculating the foreign contractor tax.

The above documents of the General Department of Taxation are not consistent on the exchange rate to be applied. In our opinion, this is the revenue of the foreign contractors who are the tax payers, so in order to consistent with the regulations on the exchange rate applied for conversion of revenue in foreign currencies, the purchase exchange rate of the commercial bank where the Vietnamese party opens the bank account should be applied (as the foreign contractors applying the deemed method do not have bank accounts in Vietnam).

Recommendation

We request the Ministry of Finance /General Tax Department to guide and clarify which exchange rate to apply for consistency.

14. Exemption from income tax on loans made under international treaties or commitments with the government of Vietnam

Issues

There are differences in the regulations on procedures for applying tax incentives under the Law on Tax Administration in different periods, specifically.

- Circular 60/2007/TT-BTC of the Ministry of Finance (effective from 19/8/2007 to 14/4/2011): there is no regulation guiding documents and procedures for application of tax incentives according to international treaties.
- Circular 156/2013/TT-BTC of the Ministry of Finance (effective from 20/12/2013 up to now): has regulations on procedures and dossiers for tax exemption. However, Circular 156 does not have the provision on retroactive application for transactions occurred before the effective date of Circular 156.

Therefore, in practice the following cases arise: Vietnamese companies sign loan agreements with international financial institutions (e.g. FMO, IFC, PROPARCO, etc.) in the period before Circular 156 was issued and these international financial institutions had signed agreements with the Government of Vietnam (collectively referred to as international treaties), which contains the provision that international financial institutions are exempt from income tax (contractor tax) in Vietnam. Accordingly, Vietnamese companies did not specify tax liability for the loan interest when signing the loan contract. Given the absence of regulations on procedures for application of exemption or reduction at that stage, Vietnamese companies sent an official letter to the tax authority for guidance, but the tax authority could not provide guidance on the procedures.

Issue 1: Currently, the tax authorities hold the opinion that enterprises must carry out the procedures prescribed in Circular 156 for the period from the effective date of Circular 156. This is unreasonable and not legally right, since Circular 156 does not have a provision on rollback to contracts that had been signed before the effective date of Circular 156, furthermore the procedures under Circular 156 is “within 3 (three) business days from the date of signing the contract with the Vietnamese party, the foreign organization or individual shall send a notification of tax exemption or reduction to the tax authority where tax is registered”, so the time to submit the procedure to apply international treaty had passed long before Circular 156 was issued.

Issue 2: We know that the Ministry of Finance is reviewing a number of agreements the Government of Vietnam has signed with international financial institutions to see if they are considered international treaties or not, thereby considering if the international financial institutions are exempt from income tax when lending money to Vietnamese enterprises once an document between the representative of the Government of Vietnam and the financial institution is present, which clearly states that such financial institution is exempt from tax on loans loaned to Vietnamese companies.

Recommendation:

Issue 1: It is proposed not to apply the tax exemption procedures specified in Circular 156 to contracts signed before the effective date of Circular 156, since contracts should be applied at the time they are signed rather and Circular 156 does not contain any retroactive provision. Moreover, the procedures required to be done within 03 business days from the date of signing the contract,

which cannot be applied in accordance with Circular 156.

Issue 2: Whether agreements signed between an international financial institution and the Government of Vietnam satisfy criteria of international treaties or not, the Vietnamese Government's committed to income tax exemption for these institutions under the agreements should still be maintained for for previously signed contracts. Failure to comply with commitments of international institutions can substantially affect the investment environment of Vietnam, for example, reducing the reputation and ranking of the national investment environment in international assessments, undermining trust of FDI enterprises which face similar problems, discouraging potential foreign investors who intend to choose Vietnam as an investment destination, knowing that commitments even though signed with the government may also be "uncertain" and conditional on subjective discretion of enforcement agencies.

15. Consistency of legal documents in tax collection by tax authorities

Issues

From the practice of tax inspection in many localities, we realize that many tax authorities are applying tax policies in a negative direction for taxpayers. For the period of inspection and examination, the tax authority may collect additional tax, but does not allow the taxpayer to declare and adjust tax reduction in case the tax authority changes its view of tax handling on the previous years when the tax inspection and examination has already been carried out. We would like to give a typical case as follows:

- A company being in operation in Vietnam since 1993 and enjoys a preferential CIT rate of 15% for the entire project period. In 2007-2008, the company built a warehouse for the purpose of preserve and storing goods in better condition. The warehouse construction is derived from the company's depreciation fund. The company's total investment capital has not increased, the business lines are the same and the company has not invested in any new production lines; therefore, the company does not recognize the project as an expansion investing activity, but as a regular investment. Therefore, the company declares CIT on all income from production and business activities at the rate of 15%.
- During 2007-2018, the Company has been subject to tax inspection until the end of the fiscal year 2015. During those tax inspections, the local tax department accepted the tax calculation method applied by the company. However, in 2019, when the tax department conducts tax inspection for the 2016-2017 period, they conclude that the activities mentioned above were expansion investing activity, and retrospectively collect the corporate income tax amount for the inspection period (according to ordinary tax rate of 20%) but does not allow enterprises to adjust their CIT finalization declarations for the period 2008-2015 to apply CIT incentives to expanded investment projects prior to 2009 in accordance with regulations in effect at the time of completion of warehouse construction(3-year exemption from the profitable year (2008-2010) and a 50% reduction in the following 5 years (2011-2015)) for the reason that the tax inspection process has been completed for the 2008-2015 period.
- We believe that this is a shortcoming, indicating an unreasonable, inconsistent application to the same matter that is highly imposing to the enterprise because in reality, this adjustment is not made as the result of the company discovering by itself the errors in the inspected tax dossiers but in fact, this is the issue raised by the tax authorities when that conduct the tax inspection at the enterprise for the following years.

Recommendation

We kindly request that the Ministry of Finance/General Department of Taxation to acknowledge the above issue and provide further guidance to the enterprises. In addition, similar issues above may also arise if other laws are applied, but has to be in compliance with the consistent application principles of the laws. Therefore, in order to avoid similar errors regards to tax treatments policies and implementations, the Ministry of Finance should consider providing a guideline on general handling principles for similar cases as above.

16. The validity term of Advance Pricing Agreement (“APA”)**Issue**

We would like to comment on Clause 7, Article 41 of Decree 126/2020/ND-CP guiding the Law on Tax Administration No. 38/2019/QH14 as follows:

“7. The effective date of APA is specified in Clause 16, Article 3 of the Law on Tax Administration. For bilateral or multilateral APAs related to tax administration by foreign tax authorities, the Ministry of Finance shall report to the Government for consideration and decision.”

According to Clause 16, Article 13 of the Law on Tax Administration No. 38/2019/QH14:

“16. Advance Pricing Agreement is a written agreement between a tax authority and a taxpayer or between a tax authority and a taxpayer and a foreign tax authority with which Vietnam has signed double taxation and tax evasion/fraud agreements for income tax for a certain period of time, which determine the transfer pricing methodology for pricing the tax payer’s international transactions. Advance Pricing Agreement is made before taxpayers submit tax filing documents.”

We believe that the provisions on the validity of APA in the Law on Tax Administration No. 38 and Decree 126 are unclear and may cause difficulties in the application of APA to businesses.

We find that most countries require APA to be effective from the year that the APA application is filed. Many countries agree with the recommendations and action plans proposed by the OECD, such as recognizing the APA's effective date according to the taxpayer's proposed time line, allowing the APA effectiveness to be rolled back to previous fiscal years.

In addition, according to Point 2.7, Base Erosion and Profit Shifting (BEPS) Action Plan No. 14 that Vietnam has committed to when participating in the Forum on Implementation of Measures to Counter BEPS, countries implementing bilateral APA should allow APA rollback in appropriate circumstances.

We can take Indonesia as a case study in the Southeast Asia. Indonesia had a provision similar to Clause 7, Article 41 above regarding the effective date of the APA, that the APA was in effect from the year the APA documents were signed and did not accept the negotiation results for the period before the time of signing. However, in an evaluation of the implementation of the OECD's tax dispute resolution program, Indonesia had to amend this provision and allow the APA effective date to be applied as suggested by the taxpayer and rolled back to previous fiscal years (in accordance with Action 14's guidance above) as recommended by OECD.

Recommendation:

From the above experience, we propose a clearer regulation on the effective date of APA under two options:

- **Option 1:** Effective from the year of filing the taxpayer's APA application and rolled back to the application period of at least five (05) previous fiscal years.
- **Option 2:** Effective from the year the taxpayer applies for APA.

We believe that the issuance of more detailed guidance on APA's effectiveness under the aforementioned options will create a truly competitive investment environment in the region, avoid any disputes and align with the OECD recommendation of BEPS Action 14. This is also to support and save time/effort for many investors from Japan, South Korea, the US, etc. who are in the process of consulting APA documents with the General Department of Taxation or who are in the final stage of negotiating taxpayers' bilateral APA dossiers from 2013 to present between the Vietnamese tax authority and the foreign tax authority. We believe that the resolution of this issue will enhance Vietnamese legal framework's transparency and alignment with international practices, and attract more foreign investment in the context of the country's effective control of Covid-19 pandemic.

17. Processing time for evaluating Advance Pricing Agreements (APA) application

Issue

The Ministry of Finance issued Circular 201/2013 / TT-BTC dated December 20, 2013, Guidance on Application of Advance Pricing Agreements to Tax Administration. Up to now, Circular 201 has been issued for nearly 7 years, however, there have not been any APA of enterprises approved by the Ministry of Finance.

In fact, many enterprises have completed the negotiation and discussion stages with the General Department of Taxation for a long time and completed phase 4 - discussion and negotiation of APA contents. The General Department of Taxation has also transferred the APA dossiers of the companies to the Ministry of Finance for seeking comments and approval but did not receive any approval from the Ministry of Finance.

Recommendation

From the reality of applying APA in Vietnam, the processing time for submitting and negotiating the APA dossiers is too long without approval from the authorities (Ministry of Finance / General Department of Taxation), affecting the companies' plan such as incurring cost burden on businesses.

Accordingly, the Ministry of Finance / General Department of Taxation please kindly take measures to accelerate the evaluating process of APA dossiers to create conditions for enterprises to stabilize their business plans as well as comply with Vietnam's tax regulations.

18. The selection of comparable companies during the determination inter-quartile range in determining transfer price for related party transactions

Issue

The Government issued Decree 132/2020/ND-CP dated November 5, 2020 ("Decree 132"), effective from December 20, 2020, providing for tax administration applicable to enterprises with related-party transactions, applicable to entities manufacturing and trading goods and services who are payers of the corporate income tax having transactions with their related parties.

In the guidance on application of the method for comparing profit margins of taxpayers with those of independent comparable companies, Point a, Clause 2, Article 14, Decree 132 stipulates that:

“a) Profit margin comparison method shall be applied according to the principle of non-discrimination concerning operational functions, assets and risks; economic conditions and accounting and bookkeeping methods taken into consideration in a comparison thereof between taxpayers and independent comparables have material effects on the profit margin. If there is any difference causing material impacts on profit margins, then these material differences must be eliminated.”

In the practical application of Decree 132 in tax and transfer pricing inspections, taxpayers are often required to demonstrate that material differences between independent comparables and taxpayers have been eliminated. In particular, in many cases of tax inspection, tax officers set the criterion of "cost ratio reflecting operational functions"/"revenue size" at their own discretion to arbitrarily adjust and eliminate taxpayers' attempts to find comparables even though national profiles have detailed the process of finding comparables.

It is necessary to determine the fact that the database used in taxpayers' transfer pricing declaration and determination has many comparables, but finding exactly the same comparable as the taxpayer (with the "cost ratio reflecting operational functions"/"revenue size" criteria above) is not feasible in practice. Therefore, in the practical application of Decree 132, the search and selection of independent comparables are often extended to related economic sub-sectors and to countries in the region (such as ASEAN or the Asia-Pacific region) to select companies with similar overall functions. Accordingly, the requirements to eliminate most of the material differences specified at Point a, Clause 2, Article 14, Decree 132 cannot be fulfilled, which leads to difficulties for taxpayers in seeking comparables and create opportunities for tax officers to impose their subjective discretion on the transfer pricing inspection results.

Recommendation

It is proposed that the Ministry of Finance consider giving specific guidance for the selection of comparables and eliminate material differences to enable taxpayers to comply with regulations on price determination of related party transactions.

19. Point of time for CIT imposition on the capital assignment tax

Issue

Article 12.7 of Circular No. 156/2013/TT-BTC, as amended by Circular No. 151/2014/TT-BTC ("**Circular 156**") requires that corporate income tax with respect to capital transfer be paid within 10 days from:

- i. the date **the competent authority approves of the capital transfer** or,
- ii. **the date of capital transfer** as agreed by sellers and purchasers in capital transfer agreement, if such capital transfer is not subject to approval of the competent authority.

This provision of Circular 156 aligns with that of Circular No. 78/2014/TT-BTC ("**Circular 78**"), which provides that time of determination of income from capital transfer is the time of transferring capital ownership. This means that, CIT is incurred upon the transfer of ownership.

As such, under scenario (i) where the capital transfer is subject to approval, the deadline for declaring and paying CIT will be 10th day from the date of such approval. This scenario should be the case of transfer of capital of a limited liability company ("**LLC**"). Particularly, under the Enterprise Law, the ownership of capital of an LLC is officially recognized under the LLC's enterprise registration certificate ("**ERC**") issued by the provincial department of planning and

investment ("**DPI**"). Therefore, a change in members of an LLC will trigger the amendment of its ERC. Accordingly, 10 days from the date of approval of the capital transfer by the competent authority should be understood as 10 days from the date of the amended ERC which certifies the ownership of buyers.

Under scenario (ii) where the capital transfer is not approval, the deadline for declaring and paying CIT will be 10th day from the date of transfer as provided under the capital transfer agreement. This should be the case of transfer of capital of a joint stock company ("**JSC**") where the ownership of shares is not recognized in that JSC's ERC but in its shareholder register. As such, a change in shareholders of a JSC will not trigger amendment to its ERC. Accordingly, CIT must be paid within 10 days from the date of transfer agreed by sellers and buyers (usually when target companies update their shareholder register and satisfaction of certain conditions). In most of the cases, especially high-profile or high value M&A transactions, the date of transfer is not and cannot be the signing date of the capital transfer agreement given that both parties have to perform a number of contractual obligations to consummate the transfer (e.g. pre-notice to third parties, termination of certain contracts, repaying certain loans, nominating new board members, etc.). However, in practice, some local tax authorities (including the Ho Chi Minh City tax authorities) take the view that deadline for CIT filing and payment is counted from the signing date of capital transfer agreement under scenario (ii) while the transfer date provided in capital transfer agreements is not the signing date.

This interpretation and approach of the tax authorities is not in line with both CIT and corporate regulations: taxpayers must pay tax when they have not derived taxable income (taxable income is deemed incurred only upon the transfer of ownership, and the transfer of ownership is done via the issuance of an amended ERC or update to shareholder register, or satisfaction of certain conditions agreed by sellers and buyers). It is also not suitable with M&A practice (transfer date is not signing date but usually months after the signing date). Therefore, parties to M&A transactions face many difficulties in satisfying this requirement of the tax authorities. Specifically, in the worst-case scenario where one transaction cannot be done after the signing date (e.g. one party walks away, one of the parties breaches the transfer agreement, etc.), i.e. no transfer of ownership of capital, it would be problematic for both taxpayers and the tax authorities if tax has been paid upon the signing of the agreement (no guidance on how to claim tax refund in such a case).

Recommendation

The tax authorities should comply with the provisions of law, which do not count the tax payment deadline from signing date but from transfer date. To avoid discretionary interpretation by the local tax authorities, the MOF may consider issuing a written guidance to the local tax authorities in respect of this issue.

20. Registration Tax-Fee

Issue

To continue removing difficulties for production and business, promoting disbursement, public investment and securing social security in the context of the COVID-19 pandemic, the Government Office proposed to "reduce excise tax by 50 per cent when registering domestically manufactured and assembled cars by the end of 2020 to stimulate domestic consumption". Currently, buyers of cars with less than 9 seats in Vietnam are subject to a 10 per cent registration fee, or 12 per cent for residents of Hanoi. With the Prime Minister's Decision to reduce the registration fee, buyers of domestically manufactured and assembled vehicles will only have to pay a fee of 5-6 per cent. Those who buy cars imported from abroad still have to pay registration

fees of 10-12 per cent depending on the locality.

Currently within domestic car companies in joint ventures, only two European brands - Mercedes and Peugeot - out of 19 imported in Vietnam will benefit on their locally assembled models.

Stimulating consumption in the automotive market is necessary as customers struggle to maintain their activities. Furthermore, it will take time for supply chain disruption to be resolved. To invoke a national crisis for a temporary remedy supporting national preference is not relevant at a time when COVID-19 is clearly a global issue.

Recommendation

We request the removal of discriminatory taxation reduction applying only to locally assembled vehicles, and recommend applying to all automotive assemblers, importers and dealers of new vehicles the reduction of 50 per cent of the registration fee. Furthermore, we recommend a 50 per cent reduction of VAT and of excise tax.

21. Declaration of Vietnam-sourced income of short-term business travelers to Vietnam

Issue

According to the current regulations, it is understood that the foreigners coming to Vietnam to work for even only 01 day are still obliged to declare PIT in Vietnam on the Vietnam-sourced income portion they received in overseas country. In fact, those strict regulations make the tax compliance impossible, especially if the individual goes to Vietnam for business trip purpose for only several days.

In the world, many countries provide for some exemption thresholds for PIT declaration for the business travelers, for instance:

- United States: the number of days in the US does not exceed 90 days/year or US-sourced income does not exceed USD3,000/year
- India: the number of days in India does not exceed 90 days/year
- Malaysia, Singapore: the number of days in these countries does not exceed 60 days/year.

Besides, as per the labor regulations, the expatriates are also exempted from work permit application if they work in Vietnam for less than 30 days/trip or 90 days/year.

Recommendation

We would like to recommend the MOF specify a threshold of days for the short-term business travelers to be exempted from PIT declaration in Vietnam on their Vietnam-sourced income portion received overseas provided so that the Vietnamese regulations are in line with international practice and the compliance of tax regulations become more feasible to the taxpayers.

22. Change in interpretation of law regarding allowable scope of operations of insurers and deductibility of related expenses

Issue

Current common and well-established industry practice leverages on a tiered agency model, wherein an individual agent completes certain team development and recruitment referral activities, in addition to selling life insurance policies to customers. Specifically, senior agents will source potential agency candidates and perform recruitment referrals, training, share their expertise, best practices, and industry acumen and assist new agents to professionalize their

customer service, enhance or refine their sales skills, manage claims for customers, and generally facilitate interactions with the insurer.

Recently, the Insurance Supervisory Authority (ISA) appeared to adopt a new opinion that agency activities in a sales model used for many years of operations are not recognized as in-scope agency activities under law.

Law on Insurance Business No. 24/2000/QH10 adopted 9 December 2000 by the National Assembly, Article 85 lists out the insurance agent activities as follows:

- i. Introduce, offer insurance for sale;
- ii. Arrange for conclusion of insurance contracts;
- iii. Collect insurance premiums;
- iv. Arrange for payment of compensation, insurance proceeds upon occurrence of insured event;
- v. Carry out other activities relating to performance of insurance contracts.

Decree No. 73/2016/ND-CP, as amended Decree No. 80/2019/ND-CP ("**Decree 73**"), Article 69 lists out insurance agent related expenses as follows:

- a. Agent commission;
- b. Expense for management of insurance agents, including initial training and certification exams, advanced trainings for agents, agent recruitment, incentives and supports for agents; and
- c. Other expenses according to the law.

All recruitment referral and team development activities of agents should fall under the category of *other activities relating to performance of insurance contracts of Article 85 of the law* mentioned above, and expenses incurred for these activities should be accommodated by Article 69 of Decree 73.

Recommendation

This sudden and unannounced change is inconsistent with the market practice established by key insurance players in Vietnam and international markets and therefore would cause serious concerns to life insurance companies. The tiered-agency model is widely accepted as the most efficient and effective industry practice internationally, in terms of cost and quality. The disallowance of the deductibility of expenses related to this model will force insurance providers to rely upon more costly and less efficient options to complete the essential activities of recruitment, training and customer service.

As such, the regulators should take a broader view to recognize the model and apply the law consistently to accept all related expenses as reasonable and legitimate expenses for CIT calculation purpose.

23. Bancassurance fee denied to be deductible

Issue

Under "bancassurance" model, insurers leverage existing bank networks and customer database to deliver products to consumers. To this end, banks and insurers cooperate, with insurance companies paying a set support fee to a cooperating bank for access to the bank's existing infrastructure, customer databases, use of facilities, geographic network, brand reputation and resources for use in distributing insurance products.

The ISA recently disallowed the deductibility of expenses related to bank distribution contracts,

which has threatened the market-standard model in the insurance industry.

Joint Circular No. 86/2014/TTLT-BTC-NHNNVN of the MOF and the State Bank, Article 7.2, stipulates as follows:

"In addition to insurance commissions, life insurance enterprises may pay agents management expenses and other expenses as provided by law and agreed in insurance agent contracts."

The support fee paid by insurers to banks should be allowed by this provision of Joint Circular 86.

Recommendation

Prepaid fees for banks are the most common practice in agreements on bancassurance of insurance industry, not only in Vietnam but also in other Asian markets. Insurance companies achieve immediate and long-term benefits from the partnership with banks which are one of the important factors deciding revenue and profit growth of insurance companies. Therefore, this expense should be deductible for CIT purpose.

IV. ISSUES OF BANKING GROUP

24. Application of Value Added Tax ("vat") on letter of credit (LC) services

Issues

All commercial banks in Vietnam have consistently treated earnings from issuing and processing of L/C as being not subject to VAT. The legal basis for such VAT treatment is as follows:

- Pursuant to all applicable circulars providing guidance on VAT through each period from 2009 to date issued by the Ministry of Finance¹, it is clearly stated that *"payment guarantee"* is a form of credit extensions not subject to VAT.
- Pursuant to Official Letter No. 11754/BTC-CST dated 6 September 2010 issue by the Ministry of Finance to Tax Departments of provinces and cities under the jurisdiction of the central government providing guidance on VAT for earnings from the provision of credit extension services, it clearly indicates that:

Letter of Credit (L/C): Letter of Credit (L/C) is a method of international payment guarantee, a payment commitment of the issuing bank (the bank of the buyer) in nature, ensuring that the buyer will pay for the purchase of goods to the seller when the conditions specified in the L/C is carried out fully and properly. If the buyer does not pay by the due date, the issuing bank shall make a mandatory loan to the buyer to proceed the committed payment to the seller. Therefore, the earnings from issuance, confirmation, notification of L/C are the earnings from guarantee not subject to VAT.

However, during tax audits/ inspections conducted by the GDT and State Audit from 2018 to date at banks (one of those is HSBC Vietnam), the tax authorities have generated different viewpoint and after spending long periods studying and considering, they have decided to apply 10% VAT

¹ Including: Circular No. 129/2008/TT-BTC dated 26 December 2008 (applicable from 18 January 2009 to 29 February 2012, Circular No. 06/2012/TT-BTC dated 11 January 2012 (applicable from 1 March 2012 to 31 December 2013), Circular No. 219/2013/TT-BTC dated 31 December 2013 (amended, supplemented by Circular No. 151/2014/TT-BTC and Circular No. 26/2015/TT-BTC – applicable from 1 January 2014 to date)

on all L/C products of the banks and collected under-declared tax, administrative penalties, and late payment interest.

Based on the tax audit conclusions at the banks, we understand the legal basis that the competent authorities have referred to and concluded about the application of 10% VAT for the L/C services from 1 January 2011 is based on Items 15 and 18, Article 4 and Article 98, Law on credit institutions No. 47/2010/QH12 dated 16 June 2010 issued by National Assembly (**effective from 1 January 2011**) (“Law on Credit Institutions 2010”).

Official Letter 1606/TCT-DNL dated 22 April 2020 sending to all tax departments across the country considers L/C simply a mean of payment via a bank account without having a guarantee element or a credit extension, hence would be subject to VAT and requested to review the collection of VAT at local banks for the provision of letter of credit services, BWG is of the view that, the interpretation by the competent authorities that all forms of L/C (with or without deposits) are forms of “*payment service provision*” being subject to VAT; instead of looking at the nature of each transaction to assess the credit risk of each product and take them as “*bank guarantee*” - which is a form of credit provision services being not subject to VAT. The interpretation by the competent authorities is not entirely appropriate and does not fully reflect the nature of the L/C services according to banking convention as well as the detailed spirit of Law on Credit Institution 2010. We would like to present the following standpoints:

- *L/C is not a pure bank payment service but also includes the provision of credit through a commitment to issue in the form of a letter of credit.*
- *According to Circular No. 22/2017/TT-NHNN, commitments in L/C operations are recorded in accounting accounts equivalent to the accounting accounts to record other commitments, including guarantee commitments.*
- *It is unreasonable and inappropriate to apply the changed VAT treatment retrospectively back to almost 10 years and this will cause financial losses to the banking industry as well as the enterprises having export and import activities.*

Recommendation

- Not apply VAT on the L/C forms having nature of credit extensions or bank guarantees in accordance with the spirit of Law on Credit Institutions 2010, Law on VAT and their guiding regulations.
- If the executive authorities change the application of VAT towards L/C forms having nature of credit extensions or bank guarantees that treatment should apply from now on and there will be no tax collection, nor imposition of administrative penalties and late tax payment for the past years. However, in order to do so, we are of the view that Law on Credit Institutions and its guiding regulations and Law on VAT need to be updated.

25. Law on tax administration

Issue 1: Withholding and paying taxes by overseas organizations and individuals whose e-commerce activities generate income in Vietnam

Law on Tax administration No. 38/2019/QH14, Clause 3 Article 27 - Duties and powers of commercial banks stipulates that:

“3. Deduct and pay tax in compliance with provisions on taxation of overseas organizations and individuals whose e-commerce activities generate income in Vietnam.”

Decree 126/2020/ND-CP detailing a number of articles of the Law on Tax Administration

providing more specific regulations on the duties and powers of commercial banks, organizations providing intermediary payment services in Clause 3, Article 30.

Under the current regulations, the bank faces many difficulties and problems if it is required to determine, deduct and pay tax obligations on behalf of overseas organizations and individuals whose e-commerce activities generate income in Vietnam, specifically:

- Part of commercial activity may be carried out by parties electronically (for example: Parties can order or transact via the Internet, email, and pay by card or on apps, etc.); the delivery/provision of services can be made in Vietnam or overseas. Therefore, the banks cannot determine whether the above transactions are **taxable or not**. Furthermore, it is also not possible to define goods/services are **supplied and consumed in Vietnam or outside of Vietnam**, or determine which transaction serves business purposes and which transaction serves consumption needs (for transactions serving business purposes, entities are responsible for tax filing, if the banks do it again, it will be double taxation), the transactions cannot be done if the banks withhold the tax because then the actual payment amount will be less than the amount requested for payment→ and hence, payment cannot be processed.
- The application of this regulation will incur additional administrative costs for commercial banks given the large number of transactions:

By referencing some guidelines on tax treatment for e-commerce transactions of the European Commission, we learned that European countries do not require commercial banks to withhold tax for these transactions. Instead, depending on the nature of the transaction/agreement in the contract, the content owners or the organizations that provide intermediary services are responsible for registration, declaration and payment of taxes directly to the tax authority.

Recommendation

It is proposed that the Government, the Ministry of Finance, the General Department of Taxation, and the State Bank of Vietnam consider providing detailed guidance so that commercial banks can comply with the provisions of Clause 3, Article 30 of Decree 126 on the basis of avoiding double tax filing and payment by obligors (Vietnamese buyers of goods, acquiring banks, and foreign organizations/individuals), avoiding double tax collection for one single transaction, aligning with practical and international practices, while releasing commercial banks from tax calculation and deduction activities/responsibilities beyond their scope of mandate, avoiding disputes and risks arising for the commercial banks. Accordingly, we recommend to stipulate that the responsibilities to pay taxes shall be performed by the parties involved in the purchase and sale of goods, the withholding or payment on behalf of, if any, by commercial banks shall be done at the request of tax authorities or as authorized/requested by overseas organizations or individuals whose e-commerce activities generate income in Vietnam on a case-by-case basis.

The Ministry of Finance and the State Bank of Vietnam shall consider and issue specific instructions for other related matters and tasks, including tax refund for counterfeit transactions.

POSITION PAPER OF TOURISM WORKING GROUP

CHALLENGES AND OPPORTUNITIES IN THE NEW NORMAL

The Tourism and Hospitality Sector, In Vietnam, has been totally ravaged by the Covid-19 pandemic. However, all stakeholders appreciate the Government's efforts to keep the population safe and to limit the community spread, in Vietnam, which produced world leading results and a limited number of fatalities.

Vietnam's revenues from tourism in the first seven months fell 55.4 percent year-on-year to VND11.1 trillion (\$479 million), according to the General Statistics Office ("GSO"). In the first six months, the number of domestic tourists fell nearly by 50 percent to 23 million, the Vietnam National Administration of Tourism reported. "Vietnam received 3.8 million foreign visitors in the first seven months of the year, down 61.6 percent year-on-year, according to GSO". With Borders still closed the number of foreign visitors is unlikely to exceed 4 million, meaning a drop of almost 80% for the year. Many tourism businesses have been forced to close and many hotels are already on the market for sale. A large percentage of the employees have either been furloughed or laid off. Many tourism companies on the stock market recorded second-quarter revenues falling 70-80 percent year-on-year, resulting in a sharp decline in profits or huge losses such as Sheraton Danang, Vietravel and Dam Sen Water Park Corporation ("DSN").

DSN reported a loss of 4.3 billion VND in the second quarter. It enjoyed a profit of 42 billion VND in the same quarter last year."¹ "Vietravel, reported revenue of 206 billion VND and a loss of 38 billion VND in Q2. In the first half, the company earned 996 billion VND in revenue, down 72 percent year-on-year and suffered a loss of more than 76 billion VND. The company is among the largest travel companies in the country with revenue coming mainly from international tours. This year, the company forecast revenue to fall nearly 60 percent compared to the previous year. It expects a loss of about 22 billion VND, after consecutive years enjoying profits."²

Our immediate recommendations to assist in sustaining the sector and helping staff and to mitigate the socio economic impact are:

- For the Government to create a fund through the banking system, possibly with funds from international donors, whereby companies in the sector can borrow, with no security, an amount equal to their contribution to Social and medical insurance and their total tax payments in 2019;
- We recommend the use of hotels for all quarantine using 2 star hotels for Vietnamese who have to quarantine and paid by the Government and also allowing Vietnamese to upgrade to higher level accommodation if they pay by themselves. All foreigners who are required to quarantine should have a choice of 3,4, or 5 star hotels. This would also make more facilities available to assist in repatriating both Vietnamese and foreigners.
- Considering allowing group tours, from overseas, to enter Vietnam on charter flights (subject to all quarantine requirements including paying for regular testing) and to stay at designated "quarantine" hotels where they are allowed to use all facilities but not to leave the hotel.

¹ Vietnam Express online

² Vietnam Express online

One other critical matter (not directly related to travel and tourism) is the number of foreigners normally resident, in Vietnam, and or family members who are currently stranded overseas. Many businesses are finding major challenges operating without key employees and families particularly those with children are finding it very damaging by this prolonged separation. Currently it takes 3 to 4 months to get the necessary approvals to return to Vietnam if there are available flights and we really request the Government to assist in resolving this situation.

As countries start to discuss reopening borders, there will be significant efforts from all our regional competitors to attract visitors, that are willing to travel and it is essential that we make Vietnam as competitive as possible. In this context it is interesting note that many travelers particularly in Europe are starting to book long haul trips for 2021.

We have long promoted the concept of visa facilitation and we believe this as an opportunity really to implement a more visitor friendly visa policy even if it were only for a trial period of 2 years.

We believe that the list of visa-exempt countries post-covid 19 should be significantly expanded, so that tourism can fulfil its key role to develop into a spearhead sector of Vietnam's economy and facilitate the recovery of Vietnam's tourism industry. Entry visa policy is one of the Government policies that has the biggest impact on international tourist flow. A report published by the United Nations World Tourism Organisation (UNWTO) and the World Travel and Tourism Council (WTTC) highlighted that international tourist arrivals increased from 5 per cent to 25 per cent as a direct result of visa facilitation. "The Impact of Visa Facilitation on Job Creation in the G20 Economies", World Travel & Tourism Council states in the light of the covid-19 pandemics and its devastating impact on the tourism industry, visa policies is perhaps the single most powerful tool governments have to stimulate inbound tourism and we encourage the government take make full use of it."

Our recommendations are as follows:

- Expanding the list of visa-exempt countries to all EU countries, Australia, New Zealand, US, Canada and key Asian inbound markets countries that are not currently visa free;
- Extending the visa exemption period from 15 to 30 days. This will enhance the competitiveness of Vietnam's tourism sector for the long haul segment, by enabling travellers to visit for long enough to discover Vietnam's culture and natural beauty and will help to increase the spending per person while visiting Vietnam; Currently trips are cut short to only 14 days;
- Providing short-stay visa exemption for the time of the event for business travellers and pre-registered groups and delegates entering Vietnam to specifically attend meetings, incentives, conferences and events
- (MICE). The high-yield MICE tourism is a dynamic segment of the global meetings industry and an important multiplier for related tourism and hospitality segments. Hassle-free visa regulations for short stay visas and dedicated fast-track immigration lanes for MICE travellers would make Vietnam more competitive and attractive to major international associations and business meetings.
- Create a 3 month long stay visa for certain outbound markets, such as Europe targeting high-income seniors who would come "over winter".

We cannot emphasise enough the importance of travel and tourism to Vietnam's economy: The industry generated around 9.2 per cent of GDP in 2019. Furthermore, in light of the Government's ambitious goal to develop tourism into a spearhead of the economy, it is imperative to recognise the

sector's contribution to the socio-economic welfare of the State in order to properly support it through an effective strategic plan for international tourism marketing, in particular in the recovery process from the covid-19 pandemic. We therefore recommend:

- Create a 24-36 months Marketing and Promotion Masterplan to lead Vietnam's recovery from the COVID-19 pandemics, with allocated budget. This should have top priority as time for reopening of borders is approaching fast and we recommend a minimum commitment of US\$ 10 million which could be supplemented through a partnership with the private sector. In appendix A we outline a plan recently introduced in Thailand (see appendix A).
- Establish a Vietnam Tourism Board, which officially represents Vietnam in the outbound markets and which actively works with tour management companies, airlines and the media in those markets, being the go-to point for tourism companies when considering Vietnam as a destination for their clients. Good examples in ASEAN include the Singapore Tourism Board (www.stb.gov.sg) or the Thailand Tourism Board (www.thourismthailand.org);
- Allocate a more reasonable amount to the national tourism promotion fund from the State budget to support tourism promotion;
- Facilitate public-private partnerships to manage and effectively operate the tourism promotion fund, aiming to promote Vietnam as a top destination in ASEAN;
- Focus promotion on target markets with a high and stable number of visitors, who tend to stay for a long time, visit regularly and spend more when travelling in Vietnam;
- Establish improved mechanisms for communication between tourism-related businesses, associations and the public sector, work with industry groups and associations on a regular basis and coordinate organisational structures; and
- Put in place region-wide coordination structures to focus and maximise the actions of cooperating provinces and facilitate cooperation.

Members of the TWG are prepared to work with our relevant counterparts to further study these recommendations and to assist with developing appropriate strategies and plans.

APPENDIX A

BANGKOK (NNT) – The Cabinet today approved in principle three 4-month tourism campaigns worth 22.4 billion baht, aimed at kickstarting the tourism sector running from July to October.

The government will be offering tourism packages and subsidies in three separate campaigns, starting with tourism packages for Village Health Volunteers and staff at subdistrict health promotion hospitals, who have worked tirelessly during the COVID-19 outbreak.

To finance this offer, the government will provide a 2.4 billion baht tourism budget for 1.2 million health volunteers and health promotion hospital staff, to enable them to take a 2-day, 1-night trip or longer with a tour company. The budget will provide an allowance of up to 2,000 baht for their tour package costs.

3,000 baht allowance for a hotel stay

As for the general public, the government will provide 40 percent or up to a 3,000 baht allowance for a hotel stay of up to five nights.

Eligible persons will receive up to 600 baht per night allowance on the government wallet application which can be used to pay for food or services during their trip.

The government will allot a 10.8 million baht budget for this campaign. To receive the allowance, the hotel stay must be in a province different from the traveler's registered province of residence.

Transportation subsidy to 2 million people

The government will also provide a transportation subsidy to 2 million people at 40 percent or no more than 1,000 baht per person, costing some 2 billion baht. The subsidy is applicable only to low-cost airline tickets, car rentals, and non-scheduled bus services.

Furthermore, people taking the benefits of the hotel stay allowance campaign, will also receive an offer of a round-trip air ticket of 2,5000 baht per person.

The government has tasked Krungthai Bank to develop a central platform to collect information from hotels, tour companies, transport providers, restaurants, and tourism attractions, while the Tourism Authority of Thailand and the Ministry of Tourism and Sports will be announcing more details regarding these offers.

POSITION PAPER AGRIBUSINESS WORKING GROUP

REBOOTING BUSINESS; ATTRACTING MOBILE INVESTMENT FLOWS

We acknowledge significant input to this paper from IFC, Vietnam.

Agribusiness is a priority for Vietnam, and the issues of product quality, traceability, bio-security and hygiene are at the forefront of development of supply chains including cold chains. For Vietnam to be a respected world player in agriculture, these issues need to be addressed, regulated and international standards must be met.

Rice continues to be the largest crop in Vietnam with 22% of agricultural production, and fertilizer and seed markets are predominantly oriented towards rice.

However, Vietnam is now recognized as a leading producer of coffee, cashews, black pepper, cassava, rubber and tea, as well as aquaculture.

Vietnam is considered to have high yields in rice, cashew nuts and coffee, but it is mid-range in terms of other major crops.

Pork represents 71% of production value, while poultry represents 20%. Feed is the principal cost related to the production of pork and poultry; since a sizable portion of inputs to commercial feed is imported, international commodity prices determine a large part of the production cost.

The agribusiness sector is dominated by smallholder farmers or small companies. Nearly 90% of agricultural land falls under households or farms, with 94 percent of household farms being 2 hectares or less (69% less than .5 ha), and in many cases this land is fragmented. Of the total agriculture companies in Vietnam, mostly involved in processing rather than production of primary commodities, more than 96% are small or very small in scale (MPI, 2018).

Most pigs are slaughtered in backyard facilities or are collected by traders and killed in small slaughterhouses handling 1-3 pigs a day, while many broilers are slaughtered in backyard operations tied to wet markets. However, some broilers and pigs are slaughtered in larger operations, and Vietnam has many industrial-scale processing companies in rice, coffee, cashews, wood, tea, sugar, vegetable and fruits.

Vietnam's retail food industry is still largely dominated by traditional wet markets and small independent traders, with traditional retailers in 2016 accounting for 94% of sales and modern retailers only 6%. However, the latter is growing rapidly due to strong economic growth, a growing middle class, rapid urbanization and concerns about hygiene and food safety.

Agricultural Sector performance

Vietnam's agricultural sector has been transformed from largely producing rice to feed domestic production, to one of the world's largest producers and exporters of a wide range of agricultural products. The volume of agriculture production rose by 189% and of livestock 282% over the past three decades.

Mechanization has increased over the past twenty years, and the 2010s were characterized by a growing shift from small to large tractors and from reapers to combine-harvesters. However, mechanization has been faster within the rice sector than in other sectors, particularly upland crops.

Irrigated land area also has increased, with more than 70% of Vietnam's cultivated area (taking into account multiple crops within a year) now serviced by irrigation infrastructure.

Export turnover in agriculture has increased sharply in recent years. Agricultural exports averaged \$US 31.5 billion per year from 2013 – 2017, an increase of 51.2% compared to the average exports in the previous 5 year period. While Vietnam's agri-food exports were commonly derived from lower grade commodity sales, the structure of export products is transforming to processed, high quality and high added-value products.

In the rice sector, high-quality rice accounts for 80% of Vietnam's total rice exports. Fruit and vegetable exports increased by an average of 33% a year from 2012 to 2018. Nevertheless, commodity price/yield gains have now levelled off and total factor productivity has fallen.

The challenge now is to transform from a large volume producer of lower quality/high volume products to a modernized, high-value agri food system.

Almost all accessible arable land is already in cultivation, so future growth in production will have to rely on increasing yields, and increases in incomes will come from transition to higher value commodities.

Major constraints to private sector development

The dominance of small-scale production and processing, limits potential gains in productivity and the shift to higher value markets. The consolidation of smallholder production and local processing to larger, more efficient farms and processing firms would increase efficiency, enable improved compliance with international and (rising) domestic standards for food safety, support stronger biosecurity safeguards, and facilitate monitoring by value chains and by government to achieve these common goals.

Lack of access to finance is identified as the main constraint on doing business by a higher share of firms in agribusiness than in any other sector in Vietnam.

Most lending to the agribusiness sector requires collateral (93% of a loan), typically a land use rights certificate. There is a limited supply of financial and non-financial products and services such as leasing, warehouse finance, receivables and contracts financing, guarantees, collateral management and insurance.

New data-network based services are appearing that use digitized information to support credit analysis, but they have not reached the scale needed to make a substantial impact on financing the sector.

Weaknesses in logistics and transport limit trade in agriculture. Vietnam's cost of logistics to GDP is as much as twice that of comparator countries. Poor logistics has particularly serious implications for agricultural products. For example, the transport of vegetables from small-scale producers, in conjunction with packaging using local materials, often fails to preserve the freshness and quality of products.

Cold chain logistics is a key issue for agribusiness sector development and modernization, to enable the industry to meet the quality requirements for both domestic and international markets.

Biosecurity threatens production and sales of agricultural products, particularly livestock. African swine fever (ASF), since 2019 is still sharply reducing pork production. Small-scale farms are most vulnerable to ASF, as they have inadequate housing facilities, poor or no vaccination, few veterinary staff and little understanding of disease control, or biosecurity management.

The government does not have the capability to monitor the thousands of small-scale slaughtering facilities. Similarly, biosecurity for poultry production is poor in village level production and informal slaughterhouses serving the wet markets. Highly pathogenic avian influenza wreaked havoc on production in 2010, and other dangerous diseases are present.

Food safety is another critical area for market access, both domestically and internationally. Reported high levels of chemical and pesticide residues in many fruit export shipments are diminishing Vietnam's reputation in the international market.

Antibiotics and growth promoters are overused in both the pork and poultry value chains, monitoring of farms and slaughterhouses (especially of small-scale facilities) is limited, and the lack of traceability or recordkeeping makes it impossible to track pig and chicken meat and to verify quality. Many exporters indicate that their principal problem in reaching new higher value markets is that they cannot control or track the activities in the supply chain.

Meeting Sanitary and Phytosanitary (SPS) requirements will be necessary for exporters to reap the full benefit of the recent entry of Vietnam in bilateral and multilateral free trade agreements (stagnation in fruit and vegetable exports to China with the tightening of food safety regulations has highlighted these risks).

Ensuring the **safety of the domestic food supply** is critical to health and the viability of the sector; otherwise expectations for safer food and processed/longer shelf life products will erode the market share of warm meat, particularly as access to imports rises.

Policy and Government Action

Increasing agricultural productivity will require effective implementation of land use and consolidation policies. Government programs to consolidate and lease land are hampered by transaction costs and land holding/usage laws.

The new Decree to improve the consolidation and acquisition process for agricultural production will hopefully include improvements in land use planning/zoning.

Establishment of a mechanism for public/private dialogue to monitor implementation would help address issues as they arise.

Improvements in financial sector policies could improve the sector's access to credit. Revision of the interest caps on short-term loans is necessary to ensure that banks have an incentive to lend to the sector. A redesign of public risk management products could improve their effectiveness. The State Bank of Vietnam's legal documentation should be revised to allow for "risk sharing", which could facilitate more lending in the absence of collateral. The government could encourage initiatives to enable and support data sharing and integration between ag-tech providers through coordinated programs and in conjunction with reforms of credit reporting systems.

Support for capacity building of public and private banks in risk management and the understanding of agriculture commodity markets could improve the pricing of financial products for the sector.

Financial and non-financial regulators should cooperate to design an action plan for supply chain finance market development (e.g. collateral management services, warehouse receipt systems, e-financing platform).

The role of state-owned enterprises (SOEs) should be reviewed. Achieving a higher value, modernized agri-food system will require transitioning from the large presence of SOEs in many sub-sectors to private sector led industries. One critical issue is that the SOEs controlling most of the irrigation systems lack transparency and there is no pricing of irrigation water, giving rise to low water productivity.

The government has an important role to play in research and dissemination of technology. The government could assist in an analysis of the viability of introducing the cultivation of protein rich crops in Vietnam, to reduce the livestock sector's dependence on imported feed, which is the largest production cost for both pork and poultry.

More broadly, research and dissemination of techniques to improve the efficiency of agricultural production are limited, and many research results are not applicable on the ground.

Improvements in the policy and regulatory environment for biosecurity and food safety along the value chain are necessary. The adoption of risk-based approaches to monitoring would help strengthen enforcement while economizing on the government's limited resources. Improved safety will require the consolidation of livestock slaughtering through the development of new policy and regulatory guidelines to improve biosecurity controls and a timeframe for meeting those guidelines. A review of the VietGap certification process would be useful, as uptake by farmers is limited, many complain about the cost of maintaining their certification and the related requirements, and there is little recognition of the standard in the marketplace and some level of distrust in certification.

Improving the governance framework and capacity of national quality infrastructure institutions in agribusiness would help ensure product conformity to internationally accepted standards. This process should be complemented by the identification of sustainable smallholder models, perhaps as suppliers into larger operations, to support household incomes while incorporating biosafe and environmentally sound operations.

As the economic sector runs the highest trade surplus in one of the most open economies in the world, Vietnam's agricultural sector was immediately affected by Covid-19 upon its outbreak in Asia.

This was a result of labour and input supply shortages, mobility restrictions and reduced logistics capacities within domestic and international markets. In the first three months of 2020, Vietnam's agricultural exports decreased sharply compared to the same period in 2019, notably to China (down 13.8%), Republic of Korea (12%), Japan (11%) and the European Union (7.7%)¹

After successfully containing the pandemic within the community during the second quarter of 2020, Vietnam quickly restored agricultural production, sped-up exports and partly achieved its turnover targets.

However, Vietnam's agricultural export data for the first two quarters of 2020 reflects pandemic-driven structural changes which could have policy implications, particularly:

- **Firstly, Covid-19 has provided Vietnam with an opportunity to increase exports of essential agricultural products, such as rice.** This trend is a result of governments' prioritization of food security during the crisis. While the demand for niche products (such as fresh tropical fruit) has decreased, it has dramatically risen for essential commodities (such as

¹ Ministry of Agriculture and Rural Development's Q1, 2020 report

rice and meat). Vietnam's rice exports in the first seven months of 2020 hit more than four million tons worth US\$1.95 billion and up only 0.6% in volume, but a jump of 13.1% in turnover compared to the first 7 months of 2019².

- **Secondly, Covid-19 has reduced demand for high-quality fresh produce but increased the appetite for imports of processed products.** As Covid-19 is believed to have resulted from animal-to-human transmission, many countries now place increased emphasis on sanitary and phytosanitary (SPS) requirements for fresh agri-food imports to prevent transmission of pathogens during cross-border trading in agricultural products. For example, exports of fruit and vegetables (F&V) to China in the first seven months of 2020, which accounts for 70% of Vietnam's fresh F&V export turnover, fell sharply to \$US 1.04 billion - down 29.3% compared to the same period in 2019. Alternatively, many countries have increased imports of processed F&V due to standardized quality, low risks of pathogens that could result in public health outbreaks as well as reduced disruptions to logistics and Customs clearance during the pandemic. As a result, while exports of fresh products to China have fallen during Jan – Jul 2020, exports to markets which traditionally consume Vietnamese processed F&V have risen, such as to the Republic of Korea up 25.2%; U.S up 9.8%; Japan (13.1%) compared to the same period in 2019³.
- **While the global demand for processed F&V has risen continuously and given its limited F&V processing capacity, Vietnam is becoming a supplier of raw materials for F&V processing centers in the region, for example Thailand.** As a leading exporter and processor of F&V in South East Asia, Thailand in the first seven months of 2020 rapidly increased F&V imports from Vietnam by 234% (\$US 79.4 million) to process and re-export to high-end markets⁴.

These changes underline the need for Vietnam to strengthen local production of essential commodities, while enhancing the respective quality, safety and processing capacities to conform to international standards.

² Ministry of Agriculture and Rural Development's Q2, 2020 report

³ Ministry of Agriculture and Rural Development's Q2, 2020 report

⁴ Ministry of Agriculture and Rural Development's Q2, 2020 report

**ABBREVIATED POSITION PAPER OF MINING WORKING GROUP
AT ANNUAL VIETNAM BUSINESS FORUM 2020**

*Prepared by
VBF Mining WG*

**FOREIGN COOPERATION AND INVESTMENT IN VIETNAM'S MINING INDUSTRY
TO SUSTAINABLY UNLOCK ITS UNTAPPED RICH MINERAL ASSETS IN THE
POST-PANDEMIC RECOVERY PERIOD**

Vietnam is exceptionally mineral-rich, but only a fraction of its mineral resources have been discovered to date, due to the country having never been systematically explored using modern technologies and methods, such as airborne geophysical surveys and regional geochemical programs to better map structures and locate more deeply buried, richer deposits.

The current status of the Vietnamese mining sector is that it is still dominated by state-owned companies, who have primarily focused on easily found outcropping or near-surface bulk minerals such as coal, iron-ore, bauxite, titanium mineral sands and limestone. There are also numerous smaller scale activities, often artisanal or illegal, mining such metals as gold, silver, tin and rare earths, all using outdated, inefficient and polluting mining methods, with the state and local stakeholders receiving no tangible benefits.

Even the Vietnamese state-owned mining enterprises admit they operate with “outdated technology and low levels of mechanization, poor infrastructure, a large but low productivity workforce, excessive energy use, high safety risks, and unacceptable environmental pollution”.

During Australian Prime Minister Morrison's visit to Vietnam in August 2019, he and Prime Minister Phuc committed the two countries to a strong bilateral relationship and a Plan of Action for Strategic Partnership for the period 2020-2023. In this context, mining is a clear candidate for such partnership.

Vietnam is well aware of Australia's status and reputation as one of the leading countries in the world for mining and processing innovation, technical excellence, safety and environmental sustainability. Numerous Vietnamese Government delegations have visited mines in Australia over the last few years, mostly organised by Austrade. Also, the Nui Phao deposit in northern Vietnam, now the world's largest tungsten polymetallic open-pit mine, is Vietnamese-owned but uses foreign (mainly Australian) expertise and management. It is an excellent example of both the diversity of Vietnam's rich mineral resources and the success that can be achieved using modern international mining methods and world best practices. Two other potentially major projects currently being explored and managed by Australian experts are the Ban Phuc-Ta Khoa nickel sulphide deposits in Son La Province and the Pu Sam Cap deep porphyry copper-gold potential in Lai Chau Province. All these projects are helping to train Vietnamese personnel in modern mining methods.

The areas where mineral deposits are found tend to be the more remote, mountainous, and therefore usually the poorest socio-economic parts of a country, and this certainly applies to Vietnam. Mining around the world has long been recognized to be one of the most effective drivers of infrastructure improvement in such remote, undeveloped areas. The other obvious benefit of responsible mining is the contribution it can make to help alleviate poverty in the remote areas it operates in by creating strong employment opportunities and orders for local goods and services.

Modern sustainable mining in Vietnam would clearly meet two of the World Bank's key objectives of its Country Partnership Framework in Vietnam which are to (a) deliver infrastructure and (b) broaden the economic participation of ethnic minorities.

The challenge the Vietnamese Government has to address is to make Vietnam's mining industry more efficient, productive, safe and environmentally sustainable. This can only be achieved by encouraging the introduction of modern technologies, technological innovation and international best practices that come to Vietnam through foreign direct investment and joint ventures between domestic and foreign companies.

Unfortunately, it is not happening yet to any extent, because inconsistent mining legislation, the difficulties associated with obtaining relevant exploration and mining permits in Vietnam and royalty rates, export tariffs and other fees that are far higher than in other countries have been a serious disincentive for foreign direct investment, including by major world companies.

There is therefore an important role the unique mining knowledge of Australia and other developed countries can play in helping Vietnam benefit from its rich mineral resources in an efficient, environmentally responsible, sustainable and safe manner, which would attract FDI and make a vital difference to Vietnam's economic growth and reduction of national debt, particularly in the post-pandemic recovery period.

III. APPENDIX

MINUTES OF MEETING BETWEEN THE GENERAL DEPARTMENT OF CUSTOMS AND VBF TAX & CUSTOMS WORKING GROUP

Date: 14:00 – 17:00, Wednesday, 30 September 2020

Venue: GDC Office

No.	Topic	Issues	Recommendations	Feedbacks from the GDC
1.	Tax policies on goods sold to export-processing enterprises (“EPE”)	<p>When domestic enterprises (non-EPEs) sell goods to EPEs, depending on the purpose of the usage by EPEs:</p> <ul style="list-style-type: none"> If EPEs import for the purpose of producing exported goods: EPEs and the domestic enterprises have to carry out on-spot export and import customs procedures (Article 75, Circular 38/2015/TT-BTC supplemented by Article 1.51, Circular 39/2018/TT-BTC). If EPEs import for commercial purposes using the EPEs’ import and export rights: both parties do not have to carry out customs procedures, domestic enterprises have to issue VAT invoice 10% to EPEs (Article 77, Circular 38/2015/TT-BTC supplemented by Article 1.53, Circular 39/2018/TT-BTC) <p>Therefore, in case the goods of the domestic enterprises are originally imported, or are produced from imported</p>	<p>Propose to apply consistent customs procedure for goods sold by domestic enterprises to EPEs for fair tax treatment for domestic enterprises, specifically as follows:</p> <ul style="list-style-type: none"> When domestic enterprises sell goods to EPEs, the two parties carry out on-spot import and export procedures, regardless of the purpose of this purchase by EPEs; Domestic enterprises can then be exempted from/get refund for import duties. When EPEs carry out on-spot import procedures, depending on the import purpose, EPEs can use appropriate import type in the import declaration to make tax payment as prescribed. <p>The above-mentioned proposal does not lead to any tax revenue loss to State budget, and helps domestic enterprises be exempted/refunded of</p>	<p>General Department of Vietnam Customs forwarded the enterprises' proposals to the Department of Tax Policy - Ministry of Finance to study and respond (Document No. 7287/TCHQ-CCHĐH dated October 16, 2020).</p>

No.	Topic	Issues	Recommendations	Feedbacks from the GDC
		goods, when sold to EPEs in case (2), and then exported by EPEs, domestic enterprises will not be exempted /refunded the corresponding import duty when they bought the goods (due to the lack of export customs declaration). At the same time, the obligation to verify the import purpose of EPEs to determine the correct customs procedures and invoice issuance, also puts a burden on domestic enterprises.	import duties when exporting goods to non-tariff zones.	
2.	Customs valuation for borrowed goods	According to Clause 9, Article 16 of the Law on Import and Export Tax, machinery, equipment, tools and means of transport, that entities and individuals temporarily import and re-export to carry out investment projects, construction, installation of works and production activities, are not exempted from import duties. The customs value of borrowed goods is specified in Clause 9, Article 17, Circular 39/2015/TT-BTC (amended in Clause 9, Article 1, Circular 60/2019/TT-BTC) as follows: <i>"For goods which are temporarily imported/borrowed, the customs value is the entire cost that borrowers must pay to bring goods to the first import gate, with evidence and documents as prescribed."</i> However, the guidance of the General Department of Customs on the value of temporarily imported/borrowed goods is not consistent,	Propose to amend Circular 60/2019/TT-BTC so that the determination of customs value is consistent for the leased and borrowed goods and borrowed goods, avoiding different implementation locality implements it in different ways.	General Department of Vietnam Customs (Import-Export duty Department) will study and revise Circular No. 39/2015/TT-BTC and Circular No. 60/2019/TT-BTC of the Ministry of Finance when there is a program to revise and supplement the Circular.

No.	Topic	Issues	Recommendations	Feedbacks from the GDC
		<p>specifically in the two following Official Letters:</p> <ul style="list-style-type: none"> Official Letter No. 8107/TCHQ-TXNK dated 30/12/2019: The customs value when temporarily imported is the value of imported goods up to the first import gate. Upon re-exportation, the import duty refund amount is determined based on the remaining value of the goods calculated based on the period of usage and stay in Vietnam. Official Letter No. 3143/TCHQ-TXNK dated 14/05/2020: At the import stage, the dutiable value is the expenses that the enterprise must pay to bring the goods to the first import gate, in accordance with supporting documents related to the goods temporarily imported, instead of the value of the goods. In this case, there is no regulation on import duty refund. <p>In fact, if the value of borrowed goods is the expenses that enterprises have to pay to bring goods to first import gate, with the case of lending between two enterprises in Vietnam (e.g. between an EPE and a domestic enterprise in the same industrial zone), these expenses are insignificant. Moreover, in case of importing from</p>		

No.	Topic	Issues	Recommendations	Feedbacks from the GDC
		overseas, domestic enterprises often do not have to pay these expenses, but need to request foreign exporter to provide invoices, break-down expenses, etc. to determine the expenses in relation to the borrowed goods.		
3.	Re-purpose usage of goods	<p>Prevailing regulations only stipulate the re-purpose procedures from duty-free goods to dutiable goods, or from goods imported for export processing to toll-manufacturing contract. However, there is no regulation on the reverse re-purpose, or between other types of tax exempted goods, causing problems for businesses, for example:</p> <ul style="list-style-type: none"> Goods of EPEs converted from type E11 (importation of raw materials and materials from abroad for production and processing of exports of EPEs) to A12 (importation of consumer goods, commercial goods; importation of input materials for business activities (except for processing, export producing, EPEs, and enterprises in non-tariff zones).) <p>The goods imported by EPEs in both cases are not subject to import duty.</p> <p>Conversion from A41 type (importation of goods under import business rights for direct sale in Vietnam and enterprises must pay full tax) to export production type (enterprises are exempt from import duty).</p>	Propose to add cases of re-purpose in regulations to address practical issues faced by enterprises.	<p>In fact, there have arisen 04 cases that need to be dealt with regarding tax policies, as follows:</p> <p><u>Case 1: Changing of use purpose from taxable to a non-taxable goods</u></p> <p>Pursuant to Clause 6, Article 3 of Law on Import-Export Duties No. 107/2016/QH13 on taxpayers, taxpayers include “<i>Owners of exports or imports that are initially tax-free but then taxed</i>”.</p> <p>Pursuant to Clause 2, Article 8 of Law on Import and Export Duties No. 107/2016/QH13 on the time for calculating export or import duty: <i>"2. The time for calculating export or import duty is the time of registration of the customs declaration.</i> <i>In case of exports or imports that are not subject to taxation, exempt from export or import duties, or applying in-quota duty rates or fixed duty but then the eligibility for tax exemption or in-quota duties is changed as</i></p>

No.	Topic	Issues	Recommendations	Feedbacks from the GDC
		<p>In this case, domestic enterprises can be refunded after exporting products, whereas if EPEs use these products in export production, domestic enterprises are not allowed to apply for tax refunds because there is no mechanism.</p>		<p><i>prescribed by law, the time for tax calculation is the time of registration of the new customs declaration.</i></p> <p><i>The time of registration of the customs declaration shall comply with regulations of Law on Customs”.</i></p> <p>Pursuant to the provisions of Clause 5, Article 25 of Decree No. 08/2015/ND-CP dated 21/01/2015, revised and supplemented in Clause 12, Article 1 of Decree No. 59/2018/ND-CP dated 20/04/2018, the provisions on additional declaration “<i>For exported and imported goods that are not subject to export duty, import duty, special consumption tax, value added tax, environmental protection tax or are exempt from tax or the tax rate and flat-rate duty are imposed according to the tariff quota, and the cargos are customs released or cleared but then subject to changes in entities that are not required to pay taxes or in purposes for which exports and imports are exempted from paying taxes; exports and imports are taxed for flat-rate duty or at the rate that conforms to the tariff quota; imports are raw materials used for processing or manufacturing exports and temporarily imported—re-exported products that have been released or cleared but then their use purpose has changed for domestic consumption, new customs declarations shall be submitted instead.</i></p>

No.	Topic	Issues	Recommendations	Feedbacks from the GDC
				<p><i>Policies on management of exports and imports; and policies on taxes levied on exports and imports shall be implemented at the time when new customs declarations are registered, except cases where all of policies on management of exports and imports have been fully implemented at the time when the initial customs declaration is registered”.</i></p> <p>Pursuant to the above provisions, the Law on Import and Export Duties and the Law on Customs only provide for the change of use purposes to serve as a basis for tax treatment of exported and imported goods. If the goods are not taxable or tax-free, then there is a change related to the goods (becoming taxable) or the tax-exemption purpose, they are required to make new customs declaration; The Law on Import and Export Duties and the Law on Customs <i>do not provide that</i> taxable goods becoming non-taxable are required to have a new customs declaration done. The supplementation of the above provisions as directed by the leaders of the General Department can only be conducted when Law on Import and Export Duties No. 107/2016/QH13 and Decree No. 08/2015/ND-CP dated 21/01/2015, Decree No. 59/2018/ND-CP dated 20/4/2018 are revised.</p> <p>Currently, Decree No. 08/2015/ND-CP dated</p>

No.	Topic	Issues	Recommendations	Feedbacks from the GDC
				<p>21/01/2015 is being revised and supplemented, however, according to the roadmap for promulgation of documents, the expected Circular revising Circulars No. 38/2015/TT-BTC, 39/2018/TT-BTC will be issued before Decree No. 08/2015/ND-CP.</p> <p>Therefore, in the short term, General Department of Vietnam Customs will not been able to submit to the Ministry of Finance for consideration and supplementation of regulations on changing the use purpose of taxable goods to non-taxable because this content is not under authority of the Ministry of Finance.</p> <p><u>Case 2: Changing of use purpose from taxable to tax-exempt goods</u></p> <p>Pursuant to Sub-clause d, Clause 1, Article 19 of the Law on Import-Export duty No. 107/2016/QH13, “Any taxpayer who has paid tax on goods imported to serve manufacture or business operation and they have been used for manufacture of exports and the products are already exported”.</p> <p>Pursuant to Article 36 of Decree No. 134/2016/ND-CP dated September 1, 2016, “Taxpayers who have paid import duty on goods imported for production and business but have been put into production for</p>

No.	Topic	Issues	Recommendations	Feedbacks from the GDC
				<p><i>exporting and the products have already been exported to a foreign country, or exported to non-tariff zones, shall be refunded with the paid import duty”.</i></p> <p>Pursuant to the above provisions, Sub-clause d, Clause 1, Article 19 of Law on Import and Export Duties No. 107/2016/QH13, Article 36 of Decree No. 134/2016/ND-CP already provide for goods that are subject to import - export duties but then put into production and the resulting products are actually exported to a foreign country or a non-tariff zone, the corresponding amount of duty for imported raw materials or supplies shall be refunded.</p> <p>Therefore, it is not necessary to add a provision on the change of use purposes from taxable to tax-exempt goods in the Circular revising Circular 38/39 because Sub-clause d Clause 1 Article 19 of Law on Import and Export Duties No. 107/2016/QH13, Article 36 of Decree No. 134/2016/ND-CP have provided for this.</p> <p><u>Case 3: change of the use purpose from a non-taxable to non-taxable goods</u></p> <p>According to the provisions of Sub-clause c, Clause 4, Article 2 of the Import-Export duty No. 107/2016/QH13, “<i>Goods exported from a non-tariff zone to abroad; goods imported</i></p>

No.	Topic	Issues	Recommendations	Feedbacks from the GDC
				<p><i>from abroad to a non-tariff zone and used within such non-tariff zone; <u>goods transported from one non-tariff zone to another</u></i>” are not taxable.</p> <p>Accordingly, Sub-clause c, Clause 4, Article 2 Law on Import and Export duty No. 107/2016/QH13 already provides that goods moving from one non-tariff zone to another shall not be taxable, so it is not necessary to add this content in the draft Circulars No. 38/2015/TT-BTC, 39/2018/TT-BTC.</p> <p><u>Case 4: Changing of use purpose from tax-free goods to tax-free goods</u></p> <p>Pursuant to Article 21 of Circular No. 38/2015/TT-BTC, which is amended and supplemented in Clause 10, Article 1 of Circular No. 39/2018/TT-BTC, “<i>Where the change of use purposes via the transfer of the goods to a tax-free or tax-exempt persons: The transferee must declare in accordance with Sub-clause a of this Clause, but shall not be required to pay tax</i>”.</p> <p>Accordingly, Circular No. 39/2018/TT-BTC already provides that imported goods of incentivized projects that are exempt from duty transferred to non-taxable or tax-exempt persons, the change the use purpose must be declared but they are not required to pay tax.</p>

No.	Topic	Issues	Recommendations	Feedbacks from the GDC
				Therefore, there is no need to add this content in the Circular revising Circulars 38/39.
4.	Re-declaration of HS code and tax treatment for the quantity of goods with inaccurate HS codes	<p>Currently, many enterprises are paying more attention to the HS code classification issue in order to (i) apply the correct import duty rate as well as avoid tax re-collection in post customs clearance audit and (ii) benefit from the Free trade agreements.</p> <p>Therefore, many enterprises have self-reviewed the HS codes that they currently apply, and from that, found out that a number of HS codes applied did not fit with the nature of the goods. The re-classification of these HS codes could potentially result in that the paid taxes were either overpaid or underpaid. It is likely that the final outcome is that there are tax arrears that need to be paid to State budget. These enterprises are willing to re-declare the customs declarations (“CDs”) of which the wrong HS codes were applied to settle their tax obligation. However, since the re-declaration process for each CD consumes a significant amount of time and resources of the enterprise, the enterprises would like to have a mechanism to only re-declare once for all CDs that need to be adjusted.</p>	<p>We would like to propose to the General Department of Customs to issue guidance or supplement/revise prevailing regulations on the aforementioned issue to assist companies who self-reviewed their HS code application can re-declared one (01) time for all incorrect HS codes, and offset with their tax obligations to ensure compliance as well as reduce complicated admin procedures for the enterprises.</p>	<p>- If the enterprise reviews the applicable HS code and discovers that some HS codes are incorrectly declared from the nature of the items, then redetermine the HS codes, resulting in shortage or declared payable tax amounts or excesses of paid tax amount.</p> <p>Based on the enterprise's written request for setting-off of taxes, the customs authority shall check and compare on the accounting system and prepare documents on adjustment of the state budget revenue or the refund cum clearing order to be sent to the State budget sends to the State Treasury to refund and offset against the payable amounts, and update it into the centralized tax accounting system. The updating on the centralized tax accounting system can be done with an excel file by the customs authority.</p> <p>- According to the law and current system design, at a time of declaration, the customs authority's system only receives one new declaration or an amended and supplemented declaration submitted by the enterprise. This ensures the principle that enterprises self-declare and be responsible for declaring information on imports and exports when doing customs clearance.</p>

No.	Topic	Issues	Recommendations	Feedbacks from the GDC
				<p>- Therefore, General Department of Vietnam Customs (Department of Information Technology & Statistics of Customs) would like to ask enterprises to proactively modify the customs declarations from the enterprise side as follows:</p> <p>+ Enterprises use the function of changing HS codes on their customs declaration software. The software will automatically find and make modifications for all related declarations.</p> <p>+ Based on the list of modified/supplemented declarations approved by the enterprise, the enterprise's customs declaration software shall automatically send each modified/supplemented declaration to the customs's system in order.</p> <p>+ The customs system will automatically receive and process each declaration in accordance with current regulations.</p>
5.	Administrative penalties for the customs offences on multiple Declarati	Regarding the Customs administrative penalties, the prevailing guidance of Decree 127/2013/ND-CP, amended and supplemented by Decree 45/2016 ND-CP and Official Guidance Letters No. 3824/TCHQ-PC dated 11/6/2019 and 15214/BTC-TCHQ dated 23/10/2014, the penalty assessment process will recognize each declaration as one separate offence	Therefore, we would like to propose that the revised administrative regulation should clearly state that the repeated administrative violations on the same behavior will only be sanctioned based on the extenuating as well as aggravating circumstances as proposed by the Ministry of Justice.	General Department of Vietnam Customs has reported to the Ministry of Finance on this issue and the Ministry of Finance has sent a written request to the Ministry of Justice to revise the provisions at Sub-clause d, Clause 1, Article 3 and Sub-clause b, Clause 1, Article 10 of the Law on treatment of administrative violations. The above-mentioned issue has been submitted to the

No.	Topic	Issues	Recommendations	Feedbacks from the GDC
	ons detected at the same time	<p>(except the case specified for dossiers failed to submit Declarations on time”).</p> <p>Pursuant to Official Letter No. 4899/BTP-QLXLVPHC&TDTHPL dated December 20, 2018, the Ministry of Justice is proposing to the Government Office to sanction only for the leveled behavior to repeat the administrative violations according to conflicting views of Article 3 and Article 10 of the Law on Penalties for Administrative Violations:</p> <p><i>“- Point d, Clause 1, Article 3 of the Law prescribes the sanction of administrative violations;</i></p> <p><i>- Point b, Clause 1, Article 10 of the Law prescribes that repeated administrative violations are only an aggravating factor. This means, if the company commits an act of administrative violation many times, it will only be sanctioned for one act and at the same time sanctioned for the behavior of repeating the administrative offence.”</i></p>		National Assembly by the Ministry of Justice for consideration and revision of the draft Law amending and supplementing a number of Articles of the Law on treatment of administrative violations (expected to be considered and approved by the National Assembly congress on November 2020).
6.	Suggestions to remove the obligation to report changes	Pursuant to Clause 36, Article 1 of Circular 39/2018/TT-BTC and Clause 42, Article 1 of the draft amending Circular, any changes in processing/manufacturing facilities should be reported, but the AEO company's scale makes it difficult to report the changes on a case-by-case basis due to	Considering that AEO is proved as a company to manage themselves, the authority should request them to report the changes in processing/manufacturing facilities annually or remove the reporting obligations.	This content is specified in the Law on Customs and the Decree guiding the Law on Import and Export Duties. This recommendation is recorded and shall be considered when revising the above Law and Decree.

No.	Topic	Issues	Recommendations	Feedbacks from the GDC
	in production/processing facilities of AEO companies	continuous changes in machinery, personnel, etc.		
7.	Regarding the tax exemption for scrap of processing company	<p>Pursuant to Point c, Clause 5, Article 44, Decree 69/2018/NĐ-CP, import duty exemption for scrap within the scope of actual BOM of processing company is granted.</p> <p>Pursuant to Clause 4, Article 10 Decree 134/2016/NĐ-CP, about Processing: Customs duties will be exempted on domestic sales to the extent that the scrap is not exceeded 3% of loss rate.</p>	The conflict between the two provisions has caused difficulties in handling scraps in the processing enterprises, and it is necessary to revise Clause 4, Article 10 Decree 134/2016/NĐ-CP to allow tax exemptions for scraps to be applied within the scope of the actual BOM, taking into account equity with the manufacturing company for export.	<p>Tax policy for scraps, waste products, and excess materials of processing:</p> <p><i>(i) From September 1, 2016 until before June 5, 2018:</i></p> <p>According to Clause 4, Article 10 of Decree No. 134/2016/ND-CP, scraps, waste products, and excess materials and supplies imported for processing not exceeding 3% of the total quantity of each raw materials or supplies imported under a processing contract shall be exempt from import duty when the goods are sold domestically, but VAT, excise tax and environmental protection tax (if any) must be declared and paid to the customs authority.</p> <p>According to the above provisions, scraps, waste products, and excess materials and supplies imported for processing not exceeding 3% of the total quantity of each raw materials or supplies imported under a processing contract shall be exempt from import duty when the goods are sold domestically, but VAT, excise tax and environmental protection tax (if any) must be</p>

No.	Topic	Issues	Recommendations	Feedbacks from the GDC
				<p>declared and paid to the customs authority.</p> <p>(ii) From June 5, 2018 to present (effective date of Circular 39/2018/TT-BTC):</p> <p>In order to resolve the above-mentioned issue, the Ministry of Finance has guided the implementation, accordingly:</p> <p>The tax treatment for scraps and waste products is determined on the basis of the actual production norms of the enterprises specified in Clause 35, Article 1 of Circular 39/2018/TT-BTC (Enterprises are not restricted with 3%):</p> <p>Procedures for declaration: The enterprise shall declare and pay tax each time (before issuing invoices for domestic sale) or on a monthly basis and submit it to the customs authority via the System with the specified information in Form No. 04, Appendix IIa, promulgated with Circular No. 39/2018/TT-BTC. Where the declaration is paper-based, the enterprise shall make use form No. 06/BKKTT/TXNK Appendix VI promulgated with Circular No. 38/2015/TT-BTC, which is revised and supplemented in Appendix III promulgated with Circular No. 39/2018/TT-BTC. The customs authority shall grant a number for the declaration for the case of paper declaration and open a separate monitoring book for the declaration. The time</p>

No.	Topic	Issues	Recommendations	Feedbacks from the GDC
				<p>limit for tax payment for scraps and waste products shall be the time of declaration with the customs authority.</p> <p>Scraps and waste products under a processing contract that are destructed in accordance with the conditions specified at Sub-clause e, Clause 1, Article 10 of Decree No. 134/2016/ND-CP shall be exempt from import duty.</p> <p><i>(General Department of Vietnam Customs issued Document No. 7565/TCHQ-TXNK dated December 25, 2018, number 19, guiding this issue)</i></p>
8.	Request of extension of the period for disposal of excess raw materials, scrap, etc. after termination of the processing contract	<p>Pursuant to Clause 42, Article 1, Circular 39/2018/TT-BTC, processing company should complete the procedure for disposal of excess raw materials/supplies, waste, rejects, hired/borrowed machinery and equipment and processed products within 30 days from the completion date or expiration date of the processing contract. However, the period to complete the procedure for disposal is too short so that the processing company has many burdens to keep the deadline.</p>	<p>Thus, it is necessary to extend it to at least 90 days after the completion date or expiration date of the processing contract.</p>	<p>At the request of enterprises, General Department of Vietnam Customs will study to revise and supplement the Draft Circular revising and supplementing Circular No. 38/2015/TT-BTC dated March 25, 2015 of the Ministry of Finance (already revised and supplemented with Circular No. 39/2018/TT-BTC dated 20/4/2018) in the direction: the 30-day period as in the current regulations shall be considered to be kept the same, but there are exceptions for cases the enterprise cannot process it within 30 days, where the reason must be clearly states with sufficient supporting documents; the Customs Branch is assigned to make decision.</p>

No.	Topic	Issues	Recommendations	Feedbacks from the GDC
9.	Regarding inconsistent policy for tax refund of re-exported goods	<p>Pursuant to Point c, Clause 1 and Clause 2, Article 19 of Law 107/2016/QH13, Article 34, Decree 134/2016/ND-CP and Official Letter No. 4557/TCHQ-TXNK dated 07 Jul 2020 of the GDC, the import tax for re-exported goods can be refunded if such goods have not been used or undergone processing and are exported using code type B13.</p> <p>However, some customs insist that re-exported goods can be declared with the code B13 only in case of below referring to 04/2007/TT-BTM despite the fact that the guideline has been discarded already.</p> <ul style="list-style-type: none"> • They are redundant or left in stock; • They fail to meet quality requirements; • They are no longer suitable to production and business activities of an enterprise; 	<p>Therefore, the GDC needs to make it clear through clarifications to regulations or detailed guidance that goods can be re-exported using B13 codes not only for the mentioned reason in 04/2007/TT-BTM but also for trading purpose if they are not been used.</p> <p>This makes it clear that re-exported goods for trading purposes can also be subject to customs duty refund.</p>	<p>Regarding this issue, General Department of Vietnam Customs issued Document No. 6529/TCHQ-TXNK dated October 8, 2020 to guide as follows:</p> <p>Imported goods which are then re-exported in the original state using HS code B13 (exported goods) shall be entitled to import duty refund and no export duty is required, and the application documents and procedures for tax refund are specified in Article 34 of Decree 134/2016/ND-CP.</p> <p>Where imported goods are re-exported in the original state without using HS code B13, their import duty will also be refunded if the customs authority has sufficient grounds, based on the re-export customs declaration, to determine that exported goods are imported before and which have not been used, processed or processed in accordance with Sub-clause c Clause 1, Clause 2 Article 19 of the Law on Import duty and Export duty No. 107/2016/QH13. The enterprise must clearly declare the previous import declaration of the re-exported goods on the export declaration.</p> <p>The instructions in this Document replaced the guidance on HS codes in Document No. 4557/TCHQ-TXNK dated 7/7/2020 and Document No. 6203/TXNK-CST dated 22/6/2020.</p>

No.	Topic	Issues	Recommendations	Feedbacks from the GDC
10.	Remove the obligation to submit liquidation report of consumable materials	<p>Pursuant to Article 60, Circular 38/2015/TT-BTC amended by 39/2018/TT-BTC, EPE shall submit a report on the use of machinery and equipment created as fixed assets and consumable supplies, and consumable goods served for EPE's activities to the Customs Sub-Department annually at least 90 days from the end of the fiscal year.</p> <p>In the case of consumable supplies that are used directly in the processing or production but are not made up or embodied and consumable goods, the types of those supplies and goods are not only diverse, but also there are practical difficulties in managing the quantity.</p>	Therefore, for consumable materials and goods, it is required to support manufacturing activities by eliminating the burden of making report or allowing it to be managed in the simplest way possible.	<p>The final settlement report on the use of imported raw materials, supplies and exported goods is specified in Article 60 of Circular 38/2015/TT-BTC dated March 25, 2015 of the Ministry of Finance (revised and supplemented with Clause 39, Article 1 of Circular No. 39/2018/TT-BTC dated 20/4/2020). Accordingly, Article 60 of the Circular provides specific instructions on the preparation of a final settlement report on the use of imported raw materials, supplies and exported goods.</p> <p>Regarding the customs declaration for consumable materials, tools and devices: General Department of Vietnam Customs issued Document No. 3304/TCHQ-GSQL dated May 27, 2019 guiding the Customs Departments of provinces and cities for implementation. It is unclear what difficulties businesses are face in implementation? Please clearly state the specific problems, provide sufficient documents, and contact the Sub-department of Customs expected to do customs procedures or General Department of Vietnam Customs (via the Department of Supervision and Management) for specific instructions or study and revise the relevant legal documents</p>
11.	Request	According to Official Letter No.	Sample goods are used when goods	Sub-clause c, Clause 3, Article 1, Decree

No.	Topic	Issues	Recommendations	Feedbacks from the GDC
	for exemption of quality inspection of sample goods	2410/GSQL-GQ1 and No. 859/BKHCN-TDC regarding the implementation of Decree No. 74/2018/ND-CP, non-commercial goods are also subject to state inspection of quality due to the absence of legal provisions on "p). Other goods serving non-business purposes (in the non-trade form) as prescribed by law" in Clause 3, Article 1 of Decree No. 74/2018/ND-CP (amending and supplementing Clause 7, Article 7 of Decree No. 132/2008/ND-CP).	<p>are inevitably needed to check and inspect before trade transactions, so the exemption of the requirements for sample goods that are imported can reduce the burden on companies and promote trade transactions.</p> <p>For reference, customs authority of Korea also allows the exemption of import and export license for the goods below.</p> <ul style="list-style-type: none"> - Goods exported and imported as transactions incidental to main exports or imports to facilitate trade transactions (such as goods deemed appropriate as a sample or advertisement for goods brought) - Goods exported and imported incidentally in order to achieve the main business purpose - Goods deemed inevitable in order to achieve the purpose of business by exporting or importing free of charge. 	74/2018/ND-CP revising and supplementing Clause 7, Article 7 Decree 132/2008/ND-CP, provides that samples imported for advertisement not valid for use; samples for scientific research, research for production; samples for testing for inspection, certification of conformity with national technical regulations, and interlaboratory testing shall be exempt from quality inspection.
12.	Regarding to handling of CD declared	Pursuant to Clause 7, Article 1, Circular 39/2018/TT-BTC, more than one bills of lading can be declared on a CD. However, more than one bill of lading cannot be declared on a CD because	VNACSS are required to upgraded to make approval the CD declared for several bill of lading to make it handled in accordance with Pursuant to Clause 7, Article 1, Circular	<p><u>*Department of Supervision and Management:</u></p> <p>Sub-clause i Clause 1 Article 18 Circular No. 38/2015/TT-BTC dated March 25, 2015 (as</p>

No.	Topic	Issues	Recommendations	Feedbacks from the GDC
	for several bills of lading	customs at border gate cannot approve the CD declared for several bill of lading on VNACSS.	39/2018/TT-BTC.	<p>revised and supplemented in Clause 7, Article 1 of Circular No. 39/2018/TT-BTC dated April 20, 2018) provides that <i>"A bill of lading must be declared on a customs declaration of imports. Where a bill of lading is declared on multiple customs declarations, many bills of lading are declared on one customs declaration or the imported goods going without a bill of lading, the customs declarant shall follow the instructions in form No. 01 Appendix II promulgated with this Circular"</i></p> <p>According to the VNACCS/VCIS system design and guidance in Section 1.26, Form No. 01, Appendix I of Circular No. 39/2018/TT-BTC dated April 20, 2018, the number of bills of lading on a customs declaration is up to 5, but the goods of these bills of lading must have the same receiver, same name of means of transport, transported in the same shipment and with the same arrival date. Thus, the law and the system currently allows the customs declarant to declare up to 05 bills of lading on 01 customs declaration.</p> <p>The VNACCS/VCIS system is designed to accept declarations of more than 1 bill of lading on import declaration. This is in line with the guidance in Circular 38/2015/TT-BTC and Circular 39/2018/Tt-BTC revising</p>

No.	Topic	Issues	Recommendations	Feedbacks from the GDC
				<p>and supplementing a number of articles of Circular 38/2015/TT-BTC;</p> <p>General Department of Vietnam Customs (Customs IT & Statistics Department) has reviewed and checked the VNACCS/VCIS system, and has not found any case where imported goods are not cleared for the reason of declaring more than 1 bill of lading on an import declaration.</p> <p>Because the issue reflected by VBF representative did not specify information of the declaration that was not cleared on the VNACCS/VCIS system, it is impossible to identify the exact cause. Please provide the specific number of declarations for us to check.</p>
13.	Suggestion for promoting the development of the forklift manufacturing industry in Vietnam	<p>Clark Material Handling Vietnam is manufacturing and trading company of forklifts and logistic equipment in Hai Duong Province, Vietnam.</p> <p>With 117 years of history, Clark developed the industrial truck in 1903 for the first time in the world, and becomes a global forklift manufacturer with outstanding technology. Clark Material Handling Vietnam has been established in August 2018, and operates 3 factories in Hai Duong province with capacity of producing 6,000 units/per year.</p>	In order to promote the development of the forklift manufacturing industry in Vietnam, an incentive policy is needed just as incentives are given to imported automobile parts.	<p>- Information given by the enterprise was incomplete in terms of combination, components, parts for manufacturing and assembling into forklifts, insufficient information on characteristics and functions of each part of the forklifts.</p> <p>- Some parts of forklift trucks mentioned by the enterprise (eg: batteries, seats) can be used to manufacture other types of vehicles and machineries, thus the consideration of tax rate adjustment for forklift parts need to be conducted in parallel with other categories of</p>

No.	Topic	Issues	Recommendations	Feedbacks from the GDC
		<p>In order to promote the competitiveness of manufacturing industrial equipment such as forklift, industrial truck in Vietnam, we would like to make some proposals as follows:</p> <p>Imported finished forklifts has a tariff of 0%, whereas parts of forklift (Electric accumulators, seat for motor vehicles, shaft assembly, etc.) other than those classified in HS Code 8431.20 is subject to a tariff rate of 5-25%. This could be reverse discrimination against forklift manufacturers in Vietnam, so it is necessary to lower the tariff rate on parts of forklift production or apply 0% of tariff rate.</p>		<p>goods.</p> <p>- The Department of Import-Export duty received the feedbacks and opinions and submitted a proposal to the leaders of the General Department to forward the above request to the Tax Policy Department - Ministry of Finance for consolidation, consider, and process in accordance with their functions and authority.</p>

**WORKSHOP BETWEEN GOVERNMENT AUTHORITIES
AND VBF INVESTMENT & TRADE WG, HR WG, TOURISM WG**

8:30 – 11:00, Friday, October 2nd 2020
Sofitel Metropole Hanoi, 15 Ngo Quyen, Hoan Kiem, Hanoi

MINUTES OF MEETING

1. Entry permission and safety requirements in the Covid-19 context: Sharing some effective regional practices and recommendations for Vietnam.

Sharing from VBF

- Vietnam has very well controlled the Covid 19 pandemic, which other countries in the world, including developed countries, have yet to do and is still trying to control the pandemic.
- The economic situation in the country and the world is changing day by day. Domestic and foreign businesses are trying to reintegrate the economy into the new normal.
- Vietnam is now seen as a safer country to travel and is gradually easing restrictions - which is a great advantage that needs to be utilized to develop a national competitive advantage.
- In order to maintain the above advantage, VBF proposes a number of recommendations regarding entry permission and safety requirements in the Covid-19 context as follows:
 - Continuously expanding the list of “low-risk” countries and considering home / residence quarantine options.
 - Allowing foreigners to enter for general business purposes.
 - Simplifying immigration procedures for foreign workers who already have a valid work permit or certificate of exemption from a work permit.
- Many other countries adopt the same protocol mentioned above, in addition to safe entry procedures, such as:
 - Check-up/testing before leaving their home countries.
 - Online submission of forms (for efficiency and environmental reasons).
 - Home quarantine option.
 - Continuous monitoring.

(For details, please see the attached files)

- Testing cost and other costs are enormous. The Government of Vietnam may consider collecting these fees for foreigners entering.
- The Civil Aviation Administration of Vietnam or the authorized Government may set up a focal point / website that gathers all airlines flying to Vietnam, clearly stating the airlines' requirements, to facilitate more for customers who book flights. Currently, airlines usually open booking only 2-3 days before the flights and many flights get canceled because of too few passengers, while customers want to book as quickly as possible and use their all resources to get full paperwork - which is now spreading out to be conducted by multiple authorities - as required by flights.
- For Vietnamese specialists or high skilled workers that wish to return Vietnam, their only option is rescue flights. Commercial flights are limited and apply the same procedures for both foreigners and Vietnamese passengers. An easier procedure for Vietnamese to return Vietnam is highly recommended.

Viewpoints from MPI and MOFA

- Different countries have different plans and policies to cope with the situation depending on population size, population density, socio-economic development level, people's literacy and

physical fitness, and the national cultural background, national preventive medicine system, capacity for socio-economic development, awareness of each individual in society.

- The Government of Vietnam is considering and having solutions to keep Vietnam safe and facilitate people to live and do their activities easily and smoothly.
- In fact, the Government has started to implement a number of measures such as: expanding the list of low-risk countries to pilot reopening commercial routes; simplifying immigration procedures for people with work permits or for experts, technical workers etc. who do not have work permits to enter Vietnam to perform some specific / ad-hoc jobs.
- From a social security policy perspective, the Government wishes to support and universalize the entire population for early-stage quarantine against the pandemic. In the future, a reasonable fee will be considered for individuals who can afford to pay.
- Regarding the initiative to establish a hub for flights, we are well noted for further consideration.
- The Government of Vietnam has established the National Steering Committee for COVID Prevention and Control, which regularly listens to opinions from businesses to provide the most effective solutions.

2. New regulations in the Draft Decree on recruitment and management of Vietnamese employees working for foreign organizations and individuals in Vietnam

Comments from Mr. Colin Blackwell, Head of VBF Human Resources Working Group

- The new draft regulations on recruiting and managing Vietnamese employees working for foreign organizations and individuals in Vietnam is very positive.
- We encourage for all foreign invested companies including representative offices to be able to freely recruit directly.
- Workforce in Vietnam now is very different, especially during the pandemic. The workforce also has different requirements. Modern employers are looking for human cognitive skills and technical skills.
- Workforce requirements and workforce planning shall be properly aligned with the educational sector to produce people that are internationally competitive.
- In terms of administrative efficiency, online data collecting is better for the private sector and will give the Government much better data.

Response from MOLISA representative

- MOLISA is developing about 15 Decrees guiding the Labor Law. The Ministry has just submitted to the Prime Minister a Decree on business registration procedures, removing labor declaration, integrating information of the labor declaration in the business registration form, tax registration, social insurance - i.e. combining four administrative procedures into one Decree.
- Decree on centralized labor management and industrial relation development has been sent to Government members in the direction that businesses only need to report on labor management together with reports on social insurance participants. Instead of performing 2 processes at 2 different agencies, only one process is needed at the National Public Service portal.
- Regarding the management of workers working for foreign individuals and organizations, we have received a lot of feedback from the parties and also removed the provision on reporting and recruitment through a job center. Only international organizations and embassies now have to fulfill this obligation, but only in parallel with self-job posting.
- In addition, MOLISA is also developing a decree related to disadvantaged workers such as workers with disabilities, etc.

Ms. Nguyen Thi Thanh Huyen, Vice Chair of Human Resources & Training Sector Committee, EuroCham

- The Labor Code has about 15 guiding decrees, and there are 20 reports required per decree on average. This is a burden for the business. Some information in different reports are overlapping, we hope that MOLISA will review & combine all the reports to minimize administrative procedures for the business.
- Reporting deadline: Different deadlines, monthly/quarterly/biannual reporting. There are reports expected to be submitted by a specific deadline, i.e. May 15 or November 15. It is also an issue for businesses to remember the reporting deadline.
- Overlapping regulations on management of foreign workers, including those on application for a work permit in the form of "internal transfer", overlapping insurance payment obligations, tax obligation, etc. It is requested that MOLISA seek opinions from other relevant ministries to cover all situations and challenges faced by the businesses.

Viewpoints of representatives of the Ministry of Labor, Invalids and Social Affairs

- The 2012 Labor Code has more guiding decrees than the current law as some previously scattered regulations have been integrated to produce only 15 decrees. These decrees cover only technical contents and there are only reports on worker management required. During the appraisal meeting with the Ministry of Justice, we also requested a thorough review to avoid any overlaps. Regarding foreign workers, enterprises are no longer required to report to the state management agency because, when applying for a work permit, information has been available to the state management agency for compilation.
- Recently, we have developed a number of decrees on connectedness. This has integrated different reports required by different organizations in the same form. The form has been integrated between Vietnam Social Insurance and the employee management agency. From here, the social insurance agency & the portal management shall integrate and share reported data with Ministry of Labor, Invalids and Social Affairs, thus reducing unnecessary reporting requirements as well as data field.
- Regarding "business presence": Since the issuance of Decree 143, the issue "internal transfer" has been strongly recommended by Associations. However, for this, the Government of Vietnam does not provide its own definition. We used the definition in the WTO agreement. During the appraisal meeting with the Ministry of Justice, it was also affirmed that the WTO definition was clear enough & has been used.
- Contributions of Social Insurance are related to the Department of Social Insurance. There are a number of countries with which Vietnam is currently negotiating a bilateral agreement to avoid overlapping payment of social insurance such as Japan & Korea.

Sharing by Mr. Do Van Su - Deputy Director General of Foreign Investment Agency, Ministry of Planning & Investment

- For disadvantaged workers, Vietnam has introduced regulations on management of workers with disabilities. Vietnam also has regulations on incentives and supports for businesses having 30-50% of workers with disabilities, ethnic minorities ..., with a lot of available government supports.
- We would like to acknowledge the opinion of VBF representatives to direct more of our attention to the humanitarian aspects of the disadvantaged in society.
- The Labor Code 2019 has integrated a lot of issues. In addition, we would like to announce that we have introduced Decree 47/2020/ND-CP issued in April 2020 on the management,

connection and sharing of digital data of state agencies. To implement this roadmap, the Ministry of Information and Communications and its specialized agencies will coordinate to build a shared national database. Filed information is not required to be declared again.

- Regarding overlapping regulations on management of foreign workers in Vietnam, the management of workers as “internal transfers” is a very legitimate need. We will review with the Ministry of Industry and Trade to see the possibility to extend the scope of this definition.
- Regarding the opinion from Eurocham Human Resources & Training Sector Committee on the exemption of work permits under the scheme of “internal transfer”, we will provide more specific guidance to provincial Departments on appraisal of applications for work permits.
- With regard to Decree 143, the premium rate is based on the Law on Social Insurance of Vietnam. Social Insurance Agency will review and make additions to this decree. We will provide further information when information is available.

3. Necessary policies to recover the tourism industry

Sharing by Mr. Ken Atkinson, Head of VBF Tourism WG

- Expanding the list of visa-exempt countries to all EU countries, Australia, New Zealand, US, Canada and key Asian inbound markets countries that are not currently visa free;
- Extending the visa exemption period from 15 to 30 days. This will enhance the competitiveness of Vietnam’s tourism sector for the long-haul segment, by enabling travellers to visit for long enough to discover Vietnam’s culture and natural beauty and will help to increase the spending per person while visiting Vietnam; Currently trips are cut short to only 14 days;
- Create a 3 month long stay visa for certain outbound markets, such as Europe targeting high-income seniors who would come “over winter”.
- We recommend the use of hotels for all quarantine using 2 star hotels for Vietnamese who have to quarantine and paid by the Government and also allowing Vietnamese to upgrade to higher level accommodation if they pay by themselves. All foreigners who are required to quarantine should have a choice of 3,4, or 5 star hotels. This would also make more facilities available to assist in repatriating both Vietnamese and foreigners.
- Allocate a more reasonable amount to the national tourism promotion fund from the State budget to support tourism promotion;
- Providing short-stay visa exemption for the time of the event for business travellers and pre-registered groups and delegates entering Vietnam to specifically attend meetings, incentives, conferences and events (MICE). The high-yield MICE tourism is a dynamic segment of the global meetings industry and an important multiplier for related tourism and hospitality segments. Hassle-free visa regulations for short stay visas and dedicated fast-track immigration lanes for MICE travellers would make Vietnam more competitive and attractive to major international associations and business meetings.
- Facilitate public-private partnerships to manage and effectively operate the tourism promotion fund, aiming to promote Vietnam as a top destination in ASEAN

Viewpoints of representatives of the Ministry of Culture, Sports and Tourism

- Immediate goals of the tourism industry: To recover the domestic market and international visitors will be granted entry if allowed by the Government. Since the first wave of Covid pandemic, the Ministry has come up with solutions to the Government to facilitate the recovery of the tourism industry in these difficult times, with a number of solutions to have been approved by the Government such as electricity price reduction, water price reduction, payment extension of taxes, tourism support packages as part of the VND 62,000 trillion

financial support package, including loans. Tax reduction will not generate any impacts as businesses have almost no revenue.

- Ministry of Culture, Sports and Tourism has cooperated with provinces to develop and publicly share stimulus packages.
- Viet Nam Tourism Development Fund has been established by the Prime Minister, with charter capital of 30 billion.
- MICE tourism: A focus for further development. We have introduced a policy to facilitate this, and are considering developing standards to support accommodation facilities. The systematic connection between high-end accommodation facilities for stronger connectedness would require more time to be realized.
- Recommendation on hotel quarantine: All provinces have list up their hotels available for quarantine - applicable for visitors who cover all the costs by themselves and experts. For visitors on the rescue flight, the management will be easier if they are quarantined in hotels. The Ministry of Public Security will provide comments on this. Some individuals with low sense of responsibility shall be kept in mass quarantine facilities under strict management measures to prevent any cases that escape from quarantine facilities.

Viewpoints of representatives of the Ministry of Foreign Affairs

- Quarantine also requires a facility to allocate staff for supports and monitoring. These staff will later be in quarantine themselves. Determination of facilities to accommodate 100 people or 20-50 under quarantine will require different considerations. This will ask for the coordination of ministries and agencies.
- As for the proposal of visa exemption for EU and American visitors, we are facing difficulties in terms of policy. There are 2 types of visa exemption: unilateral visa exemption & visa exemption under agreement. Vietnam has offered visa exemptions, unilaterally, for citizens from 3 countries and, under agreement, to many countries. The visa exemption policy shall reflect the spirit of "reciprocity". In addition, the extension to 30 days can only be offered when a bilateral agreement is signed.

**WORKSHOP BETWEEN GOVERNMENT AUTHORITIES
AND VBF INVESTMENT & TRADE WG, HR WG, TOURISM WG**

8:30 – 11:00, Friday, October 2nd 2020
Sofitel Metropole Hanoi, 15 Ngo Quyen, Hoan Kiem, Hanoi

ANNEX: COMPARATIVE TABLE ON ENTRY PERMISSION AND SAFETY REQUIREMENTS

Country	1. List of persons/ circumstances that are allowed for entry	2. Safety requirements for the entry (Negative test, insurance coverage, etc.)	3. Quarantine requirements and how the quarantine is monitored and managed
Australia	<p>The following individuals are allowed to travel to Australia and does not require a travel permit from the Australian Border Force:</p> <ul style="list-style-type: none"> • an Australian citizen • a permanent resident of Australia • an immediate family member of an Australian citizen or permanent resident (proof of relationship required unless they already hold a partner visa) • a New Zealand citizen usually resident in Australia and their immediate family members • a diplomat accredited to Australia (holding a subclass 995 visa) • a traveller transiting Australia for 72 hours or less • airline crew • maritime crew including marine pilots • recruited under the Government approved Seasonal Worker Program or Pacific Labour Scheme 	<p>All international travellers arriving in Australia (including Australian citizens and permanent residents) will be health screened for COVID-19 in the first 48 hours and then between days 10 to 12 of quarantine. If they refuse testing, they may have to quarantine for a longer period. Exact testing arrangements depend on each state and territory.</p> <p>Some visa holders, such as employer sponsored work visa holders must hold a mandatory health insurance cover as part of their work visa conditions.</p>	<p>All international travellers arriving in Australia (including Australian citizens and permanent residents) must undergo the mandatory 14-day quarantine at a hotel designated by the state/territory government in the city they arrive in, and they may need to undergo further quarantine if they need to travel to a different state or territory.</p> <p>State and territory governments, with support from the Australian Federal Government, manage quarantine arrangements including:</p> <ul style="list-style-type: none"> • transport for travellers from their arrival point to their quarantine accommodation; and • quarantine arrangements at the accommodation facility

	<ul style="list-style-type: none"> holder of a Business Innovation and Investment (subclass 188) visa <p>All other temporary visa holders/applicants must meet one of the following travel exemption criteria to apply for and obtain a travel exemption from the Australian Border Force:</p> <ul style="list-style-type: none"> a non-citizen travelling at the invitation of the Australian Government or a state or territory government authority for the purpose of assisting in the COVID-19 response providing critical or specialist medical services, including air ambulance, medical evacuations and delivering critical medical supplies a non-citizen sponsored by your employer to work in Australia in an occupation on the <u>Priority Migration Skilled Occupation List (PMSOL)</u> a non-citizen whose entry would otherwise be in the national interest, supported by the Australian Government or a state or territory government authority military personnel, including those who form part of the Status of Forces Agreement, Commonwealth Armed Forces, Asia Pacific Forces and Status of Armed Forces Agreement a student completing year 11 and 12, with support from the relevant Australian State or Territory government health authority and education department 		
--	---	--	--

	<ul style="list-style-type: none"> • travelling for compassionate and compelling reasons. • a non-citizen with critical skills or working in a <u>critical sector</u> in Australia, and the critical skills/sectors include those: <ul style="list-style-type: none"> - <i>travelling at the invitation of the Australian Government or a state or territory government authority for the purpose of assisting in the COVID-19 response</i> - <i>providing critical or specialist medical services, including air ambulance, medical evacuations and delivering critical medical supplies</i> - <i>with critical skills required to maintain the supply of essential goods and services (such as in medical technology, critical infrastructure, telecommunications, engineering and mining, supply chain logistics, aged care, agriculture, primary industry, food production, and the maritime industry)</i> - <i>delivering services in sectors critical to Australia's economic recovery (such as financial technology, large scale manufacturing, film, media and television production and emerging technology), where no Australian worker is available</i> - <i>providing critical skills in religious or theology fields</i> - <i>sponsored by your employer to work in Australia in an occupation on the <u>Priority Migration Skilled Occupation List (PMSOL)</u></i> 		
--	---	--	--

<p>China</p>	<p>Basically, the following individuals are allowed to enter mainland China freely.</p> <ul style="list-style-type: none"> Chinese passport holder Residents of Hong Kong, Macau and Taiwan with valid Mainland China Travel Permit Chinese permanent residence card holder <p>For foreigners who are not permanent resident of China, they will need to apply for special entry visas to enter China. The application for special entry visa currently will only be issued under the following circumstances:</p> <ul style="list-style-type: none"> Urgent business needs - Pre-approval by the Ministry of Foreign Affairs in China will be required. Emergency humanitarian needs - Pre-approval by the Chinese Embassy/Consulate/Visa Office where the visa application is submitted. <p>In some European and Asian countries, foreigners holding valid Chinese residence permit (work, reunion, personal affairs) may be allowed to apply for entry visa directly. This is subject to the practice of the specific Chinese Embassy/Consulate/Visa Office in that country.</p>	<p>Negative certificate of nucleic acid test and health status statement are required for boarding.</p> <ul style="list-style-type: none"> Chinese and foreign passengers on China-bound flights shall complete COVID-19 nucleic acid tests within 5 days before boarding. Tests shall be carried out in facilities designated or recognized by overseas Chinese Embassies/Consulates. Chinese passengers are required to take photos of and upload their negative results of COVID-19 nucleic acid tests using the international version of the health QR code applets on WeChat. Foreign passengers should apply with the Chinese Embassies or Consulates for the Health Declaration Letter with negative test results of COVID-19. Relevant airlines are responsible for checking passengers' health QR codes and Health Declaration Letter before boarding. <p>Chinese Embassies and Consulates have implemented local measures for nucleic acid test and applying the Health Declaration Letter. The individual shall check with the airline company as well as the in-charge Chinese Embassy/Consulate on specific local requirements.</p>	<p>Currently all passengers arriving in mainland China will be subject to COVID testing and centralized quarantine for 14 days upon arrival except for those who travelled from Macau. Individuals travelling from Macau will need to stay in Macao for at least 14 days and will need to provide health code or negative COVID testing result done within 7 days before travelling in order to be exempted from the 14 days quarantine.</p> <p>Those who are tested positive upon arrival will be sent to designated hospital for further medical observation. Those who are tested negative will be sent to designated hotel to complete the 14 days quarantine, and will be released after completion of the quarantine. A few more tests will be done during the quarantine period.</p> <p>Home quarantine only apply in limited cases under the following situation, and is really upon approval by the local authority.</p> <ul style="list-style-type: none"> Elder, age at 65+ Pregnant woman Minors, under age of 14 People has difficulties in mobility
---------------------	--	---	---

			<ul style="list-style-type: none"> • People has to take care of elder or kids • People has underlying disease (like diabetes, hypertension etc.)
Hong Kong	<ul style="list-style-type: none"> • Hong Kong residents • If an individual holds an entry visa to Hong Kong (i.e. new entry visa waiting to be activated), he/she will be treated as a resident and not subject to the travel ban for non-residents. 	<p>Health Declaration System</p> <ul style="list-style-type: none"> • All inbound travellers are required to submit health declaration form. • To be environmental friendly, travellers are encouraged to submit the form online. (https://www.chp.gov.hk/hdf/). • After submitting the online form, the system will generate a QR code. Please save the result and show it to the border control point staff upon entering Hong Kong. The QR code is valid for 48 hours. • In addition, inbound travellers can continue to submit the paper form. <p>Enhanced testing for inbound travellers</p> <ul style="list-style-type: none"> • Starting from 4am on 18 August 2020, those arriving Hong Kong via the Hong Kong International Airport will be required to proceed to the Temporary Specimen Collection Centre (TSCC) set up in the restricted area of the Airport for collecting their deep throat saliva samples immediately upon arrival. They will need to stay at the TSCC to wait for test results which will be available on the same day before they can proceed with immigration procedures. For passengers whose test results will not be available on the same 	<ul style="list-style-type: none"> • All inbound travelers entering Hong Kong from other places must stay at designated places (quarantine center, home or other accommodation) for a 14-day compulsory quarantine. They should not have any symptoms and should have passed temperature checks upon entry. Those with symptoms will be referred to the Department of Health for further handling. All non-Hong Kong residents coming from overseas countries and regions by plane will be denied entry to Hong Kong. • In last two months, the Hong Kong government expanded the scope of specified places, imposing conditions based on public health grounds on travelers who have visited specified high-risk places within 14 days before arrival in Hong Kong. For travellers coming from Bangladesh, Ethiopia, India, Indonesia, Nepal, Pakistan, the Philippines, South Africa, Kazakhstan and the

		<p>day (usually passengers arriving in afternoons or at nights), they can proceed with immigration procedures right after collecting their deep throat saliva samples at the TSCC. They will subsequently be taken to the Holding Centre for Test Result (HCTR) of the Department of Health in hotel by coaches arranged by the Department of Health to wait for their test results. However, the Department of Health will make flexible arrangements according to its capacity and the daily number of passengers arriving on afternoon flights. If necessary, inbound travellers arriving in the afternoon could also be arranged to wait for test results at the TSCC. In general, the relevant passengers will only stay in the HCTR for one night and will be arranged to leave on the next day when their test results are available. If their test results are negative, they will be allowed to leave the hotel and go home or to a designated place immediately to continue completion of the 14-day compulsory quarantine. Confirmed cases and their close contacts will respectively be arranged for admission to hospital and sent to designated quarantine centres direct.</p> <ul style="list-style-type: none"> • If the day's number of inbound travellers is expected to exceed the capacity of the two aforementioned centres, the Department of Health will adopt a triage 	<p>United States of America or they have visited the ten countries during the 14 days before they arrive Hong Kong, they must have the COVID-19 test (taken within 72 hours before the scheduled time of departure) and submit the test result to the airlines before check in. The details are highlighted in yellow in the attached press release from the Hong Kong government dated 21 August 2020.</p>
--	--	---	--

		<p>measure based on risk assessment. Passengers arriving from areas with lower risk will proceed to the designated place for the 14-day compulsory quarantine after collecting their deep throat saliva samples at the TSCC. If their test result is positive, the Department of Health will arrange to send them to a hospital for treatment as soon as possible and arrange to send their close contacts to a quarantine centre.</p>					
Singapore	<p>The following persons are allowed to enter Singapore:</p> <ul style="list-style-type: none"> a. Singapore citizens; b. Singapore permanent residents; c. Long-Term Pass Holders and/or foreigners who are issued In-Principle Approvals ("IPAs")¹ by the relevant government agencies in Singapore i.e. Ministry of Manpower ("MOM"), Immigration & Checkpoints Authority ("ICA") – Note: They must obtain permission for entry from the relevant agencies (which issue their passes and/or IPAs) before they can travel to Singapore; d. SafeTravel and Air Travel Pass holders – Note: Please refer below for more information. 	<p>All travelers to Singapore must submit their health, travel history, and accommodation declarations electronically via the <u>SG Arrival Card</u> e-service, no earlier than three days prior to their date of arrival in Singapore.</p> <p>For SafeTravel and Air Travel Pass holders, they may be required to undertake a COVID-19 polymerase chain reaction ("PCR") within 48 or 72 hours from departure to Singapore, and need to produce a certificate of having tested negative for COVID-19 as part of the pre-boarding requirement – depending on which country they are departing from. Upon arrival in Singapore, these group of travellers are to undergo another COVID-19 PCR test.</p> <p>Singapore citizens, Singapore permanent residents, and the Long-term Pass and/or IPA holders returning to Singapore from all other countries (i.e. countries which do not have</p>	<p>Travelers returning to Singapore are generally required to serve 7 or 14-day Stay-Home Notice ("SHN") at their own accommodation, a hotel of their choice or a SHN Dedicated Facility ("SDF"). Such requirement may vary, depending on their immigration status, and countries they are travelling from.</p> <p>Below is a brief overview of Singapore's measures for inbound travelers in relation to the SHN requirement – Note: The COVID-19 situation is constantly evolving around the world as such these details may change accordingly:</p> <table border="1"> <tr> <th>Travel history in the last 14</th><th>Singapore citizens,</th><th>Long-term pass holder</th><th>Short-term visitors</th></tr> </table>	Travel history in the last 14	Singapore citizens,	Long-term pass holder	Short-term visitors
Travel history in the last 14	Singapore citizens,	Long-term pass holder	Short-term visitors				

<ul style="list-style-type: none"> SafeTravel Pass: Official and business travellers from the following countries / regions will be permitted to enter Singapore using a SafeTravel Pass. Applications for a SafeTravel Pass must be sponsored by a company or government agency in Singapore. <ul style="list-style-type: none"> ➤ People's Republic of China, but restricted to six Chinese provinces and municipalities (Chongqing, Guangdong, Jiangsu, Shanghai, Tianjin and Zhejiang); ➤ Malaysia ➤ Brunei Air Travel Pass: Travellers travelling from the following countries can visit Singapore on a short-term basis if they qualify for an Air Travel Pass. <ul style="list-style-type: none"> ➤ Brunei ➤ New Zealand <p>¹ These refers to holders of passes and/or IPAs issued by MOM (e.g. Employment Pass, EntrePass, Personalised Employment Pass, S Pass, Work Permit, Dependant's Pass, etc.) and by ICA (e.g. Long-Term Visit Pass, Student's Pass, etc.).</p> <p>Foreigners who do <u>not</u> belong to any of the aforementioned groups or do not have any valid</p>	green-lane / fast-lane / travel arrangements with Singapore) are not subject to the aforementioned pre-entry safety-related requirements.	days in countries / places	Singapore permanent residents	s, IPAs holders	
		<ul style="list-style-type: none"> • Brunei • New Zealand 	Not required to serve SHN	Not required to serve SHN	Not required to serve SHN (i.e. for those with valid SafeTravel Pass or Air Travel Pass)
		<ul style="list-style-type: none"> • Australia (excluding the state of Victoria) 	7-day SHN at own accommodation or hotel of own choosing;	7-day SHN at own accommodation or hotel of own choosing;	7-day SHN at own accommodation or hotel of own choosing (i.e. for

	approval letter for entry are not allowed to enter Singapore.		<ul style="list-style-type: none">• Mac ao• Mai nlan d Chin a• Mal aysi a• Tai wan• Viet nam			those with valid approva l letter for entry)
			All other countrie s / places	14-day SHN at SDF	14-day SHN at SDF	14-day SHN at SDF (i.e. for those with valid approva l letter for entry)
The following groups of travellers will be exempted from the SHN requirement: <ul style="list-style-type: none">• Travellers who enter Singapore with a valid SafeTravel Pass;						

			<ul style="list-style-type: none"> • Returning Singapore citizens and Singapore permanent residents holding a Malaysia-issued MyTravelPass, and have an approved SHN waiver for short-term leave in Singapore; • Foreign travellers who enter Singapore with a valid Air Travel Pass; and • Singapore citizens, Singapore permanent residents and Long-Term Pass holders (with Approval Letter of Entry) who spent at least 14 days prior to arriving from Brunei Darussalam and New Zealand. <p><u>Management and Monitoring of SHN</u></p> <p>To aid ICA's efforts in the enforcement of the SHN requirement, travellers entering Singapore from 10 August 2020, 2359hrs onwards, and are not serving their SHN at the SDF will be issued with an electronic monitoring device. This device must be worn by the traveller for the full duration of the SHN period. Travellers aged 12 or</p>
--	--	--	--

			<p>younger (in that calendar year) are exempted from wearing the device.</p> <p>In addition, they may be contacted by the enforcement officers via texts, video calls, and/or inspections to ensure they are complying with the SHN requirements.</p>
Japan	<p>Currently in Japan, measures are in place to deny landing of foreign nationals who have been in 159 countries and territories designated by immigration restrictions under the Immigration Control and Refugee Recognition Act ("Area Subject to Denial of Entry") within 14 days prior to the date of their application for landing, unless there are "special circumstances" as defined by the Immigration Control and Refugee Recognition Act.</p> <p>For the information about designated countries and territories above and for the details of the measures above, please see this page (http://www.moj.go.jp/content/001316999.pdf).</p> <p>Entry restriction measures related to COVID-19 in Japan are frequently updated, so please check the Ministry of Foreign Affairs website (https://www.mofa.go.jp/ca/fna/page4e_001053.html) for the latest information.</p>	<p>The safety requirements to comply with before and after entering Japan are as follows.</p> <ul style="list-style-type: none"> • All passengers from all countries and regions should take the following steps before and after entering Japan. <ul style="list-style-type: none"> ✓ To secure a place to wait for 14 days from the day following the passengers arrival in a place designated by the quarantine station chief (e.g., your home). ✓ To ensure a means of transportation from the airport etc. to the place of stay without using public transportation. ✓ Register with the quarantine office the place where the passengers will be waiting after they enter Japan and how they will be transported from the airport etc. • In addition to the above, if the passengers have been in the above mentioned "Area Subject to Denial of Entry" under the Immigration Control and Refugee Recognition Act within the past 14 days 	<p>As mentioned above, if the passengers have been in the above mentioned "Area Subject to Denial of Entry" under the Immigration Control and Refugee Recognition Act within the past 14 days of their entry into Japan, they should be inspected for the COVID-19.</p> <p>The health center with jurisdiction over the address the passengers indicated on the questionnaire to be submitted to the time of their arrival in Japan will contact the passengers by phone or e-mail to confirm their health status for 14 days after they arrive in Japan.</p> <p>Even if the results of the inspection for the COVID-19 are safe, the passengers will be asked to wait in their own secured area for 14 days from the day after their arrival in Japan, and will be subject to health confirmation by health centers.</p>

		<p>of their entry into Japan, they should take the following steps.</p> <ul style="list-style-type: none"> ✓ To be inspected for the COVID-19 ✓ As a general rule, the passengers must wait in the space at the airport or the facility designated by the quarantine office until the inspection results are obtained (excluding Fukuoka Airport for the time being). <p>*Though depending on the circumstances, it may be found out the result the day after arrival. In this case, the immigration procedure will be proceeded after the result was found out.</p>	
Taiwan	<p><u>Background</u></p> <p>Taiwan's approach for entry approval and safety control varies based on the inbound passenger's nationality and their location of departure. In general, citizens are allowed for entry, and foreigners are only allowed for entry if they have a resident certificate or if their entries are approved by the government. In terms of safety control, the passengers will be subjected to quarantines and/or be required to submit a negative test report.</p> <p>Due to the special relationship between Taiwan and the People's Republic of China, Taiwan has special treatment for Chinese Citizens. As this</p>	<p><u>Citizen</u>: 14 days quarantine.</p> <p><u>Foreigner</u>:</p> <ul style="list-style-type: none"> A. With Resident Certificates: 14 days quarantine. B. Without Resident Certificates: <ul style="list-style-type: none"> I. For purposes other than travel or social visit: Negative test report within three days from boarding the airplane and 14 days quarantine. <p>If the purpose of the travel for short-term (less than three months) business activities, and the location of departure is a low/medium risk country/location as announce by the competent authority,</p>	<p>The quarantine is monitored and managed by the government official through:</p> <ul style="list-style-type: none"> A. Telephone check-in: Twice a day. B. On-site visitation: At least once in the 14 days. C. If the passenger does not comply with the quarantine or does not stay on the premises, the passenger may be subjected to fines or detentions.

	<p>does not apply to Vietnam, we will not cover this in the below comments to your specific questions.</p> <p>List of persons/ circumstances that are allowed for entry:</p> <p><u>Citizen:</u> Citizens are allowed to return to Taiwan.</p> <p><u>Foreigner:</u></p> <p>A. With Resident Certificates: Allowed for entry.</p> <p>B. Without Resident Certificates:</p> <p>I. For purposes other than travel or social visit: Can apply for a special permit from the Ministry of Foreign Affairs.</p> <p>II. International medical personnel approved by the Ministry of Health and Welfare: Allowed for entry.</p> <p>III. Students and their parents approved by the Ministry of Education: Allowed for entry.</p> <p>IV. For travel or social visit purpose: Not allowed for entry.</p>	<p>the passenger can apply to shorten the quarantine period to 5 to 7 days.</p> <p>II. International medical personnel approved by the Ministry of Health and Welfare: Negative test report within three days from boarding the airplane and 14 days quarantine.</p> <p>III. Students and their parents approved by the Ministry of Education: 14 days quarantine.</p>	
Korea	<p>Foreigners who need to enter Korea due to necessary reasons (excluding tourism) may apply for visas. Interviews will be conducted.</p> <p>[Ref: https://overseas.mofa.go.kr/sg-en/brd/m_2444/view.do?seq=761454&srchFr=&srchTo=&srchWord=&srchTp=&multi_itm_seq=0&itm_seq_1=0&itm_seq_2=0&company_cd=&company_nm=&page=1]</p>	<p>Must obtain a doctor's letter issued no more than 48 hours before visa application.</p> <p>[Ref: http://overseas.mofa.go.kr/sg-en/brd/m_2444/view.do?seq=761454&srchFr=&srchTo=&srchWord=&srchTp=&multi_itm_seq=0&itm_seq_1=0&itm_seq_2=0&company_cd=&company_nm=&page=1]</p> <p>All passengers on the flight to Korea will undergo fever check at the departure airport.</p>	<p>All inbound travelers (including returning Korean nationals) are required to quarantine themselves for 14 days upon their arrival in Korea starting from 01 April 2020.</p> <p>1. Korean nationals and foreign nationals who reside in Korea will self-quarantine at their place of residence for 14 days.</p>

		<p>Boarding will be rejected for those who have fever with temperature over 37.5'C.</p> <p>All international/domestic passengers must wear a mask.</p> <p>All passengers entering Korea will undergo special quarantine.</p> <ul style="list-style-type: none"> - must have an available phone number - must have a mobile device for installing self-diagnosis apps - restricted to use public transportation and domestic flight. (<i>Exceptions:</i> Jeju residents, certificate of quarantine exemption holders, E9 visa holders) - must get COVID-19 test within 3 days upon arrival <p>Individuals will pay for hospitalization of infectious diseases for confirmed foreign patients who have arrived from overseas.</p> <p>[Ref: https://www.koreanair.com/global/en/202002_TSA_detail.html]</p>	<p>2. Foreign nationals who are short-term visitors in Korea and Korean nationals and/or foreign residents whose place of residence is deemed not suitable for quarantine, will serve the quarantine at a designated government facility at their own cost. The Facility Quarantine Agreement must be completed and submitted to the airlines.</p> <p>The spouse and lineal descendants of Korean national or long-term residents of Korea may self-quarantine in the Korean national/long-term resident's place of residence instead of government facility by providing official family relations documents. Lineal descendants refer to direct line of descent such as grandparents, parents, child. Siblings are not included.</p> <p><i>Exceptions:</i></p> <p>Application of Isolation Exemption Certificate:</p> <ul style="list-style-type: none"> - Entry related to important and urgent business (contract, investment, technical advisory) / academy / humanitarian reasons. If the above purposes are met, you may apply for "Isolation Exemption"
--	--	--	---

			<p>Certificate" by submitting the following:</p> <p>+ Important & urgent business/academic/public purposes:</p> <ul style="list-style-type: none"> • Written explanation letter on the important and urgent reason for entering Korea issued by the Korean company • Invitation letter from Korean company • Certificate of business registration of the Korean company issued within the past 3 months • Korea Government Official letter (i.e., Ministry) • Passport (original and copy) • Quarantine Exemption Agreement • Confirmed flight itinerary <p>[Ref: https://overseas.mofa.go.kr/sgen/brd/m_2444/view.do?seq=7614511]</p>
--	--	--	---

MEETING MINUTES OF DIALOGUE BETWEEN THE MINISTRY OF FINANCE AND VBF ON 11 DECEMBER, 2020

STT	Topic	Issues	Recommendation	Responses
1	Difficulties in the implementation of the regulations regarding Export processing enterprises ("EPE") according to Decree 82/2018/ND-CP	<p>Issue 1: The amendment of the Decree 82/2018/ND-CP</p> <p>Article 30 Decree 82/2018/ND-CP dated 22/5/2018 ("Decree 82") regulates that:</p> <p><i>"1. Export processing zones and export processing enterprises shall be subject to regulations applicable to separate customs areas and non-tariff zones, except for particular regulations applicable to non-tariff zones within border gate economic zones. If export processing enterprises may be exempted from applying for the Certificate of investment registration, such exemption shall be specified in their investment registration certificates or written document issued by the competent investment registry. The investment registry shall be held responsible for gathering opinions from the competent customs authorities on the capability to satisfy conditions of the customs inspection and supervision before issuing the investment registration certificate or confirmation in writing to investors.</i></p> <p><i>2. In industrial parks, there may be industrial sub-zones for export processing enterprises. Export processing zones, export-processing enterprises or industrial parks reserved for export-processing enterprises shall be</i></p>	<p>We request the Ministry of Finance to consider amending Decree 82 in the direction of not to promulgate requirements for consulting the customs authorities at the stage of licensing for EPEs. The investment management authority may issue investment registration certificates that allow enterprises to apply the EPE status based on the plan of investment in production and export as well as the enterprise's commitment. EPEs will be responsible for complying with the requirements of legal documents on customs and import and export taxes applicable to non-tariff zones and EPEs. The authorities will apply the "post-check" mechanism to check the implementation/fulfillment of the prescribed requirements of the EPE and will apply the</p>	<p>- The Ministry of Finance has repeatedly proposed to the Ministry of Planning and Investment on the removal of the requirement on consultation with the customs office. MOF has recently drafted the Decree amending Decree 134 providing for the details of the Law on import and export duties, in which two options to solve this problem are mentioned.</p> <p>We have also included this in the draft Circular amending Circular 219 on VAT.</p> <p>Regarding the tax problems, according to the regulations, VAT payers apply a tax deduction method that is eligible for VAT refund. The problem is to determine whether the business is liable to pay VAT or not. If a business is a tax payer, they will get VAT refund. The declaration form will be applied accordingly.</p> <p>According to the current regulation, export processing enterprises are not VAT payers, so they shall not get tax refund. Therefore, in this case, enterprises need to clarify with relevant agencies to solve the root causes of the problem, clarifying the provisions of the Law on Investment, Decree 82, Law on Export Duty, including the granting of investment certificates as export processing enterprises → the purpose is to determine the accurate VAT payers from time to time.</p> <p>The Ministry of Finance will report to the government to address this issue.</p>

	<p><i>separated from the outside by fence systems, have gates, entrance and exit doors, and fulfill requirements concerning supervision and control by customs authorities and related functional agencies according to regulations applicable to non-tariff areas and regulations laid down in the legislation on import and export duty.</i>”</p> <p>In implementation of the above regulations of Decree 82, when considering licensing for EPEs, the investment authority consults for opinions of the customs authority. However, the customs authority views that <i>there are no specific regulations on the satisfaction of conditions for customs inspection, supervision and control of customs authorities and other competent authorities for EPEs; therefore, there are no basis to confirm such condition.</i> In addition, in terms of condition that the export processing enterprise must ensure <i>separation from the outside territory by a system of fences, gates and doors, and ensure conditions for the inspection, supervision and control of customs authorities and other authorities,</i> at the time of applying for the Investment Registration Certificate ("IRC"); <i>it is sure that no enterprise meets the conditions</i> since it is only after obtaining the IRC that factory construction/rental factory renovation activities are performed to meet the above conditions. In according to this understanding, the EPEs regimes cannot be applied in practice.</p> <p>Due to the above fact, although the investment authorities issue licenses to the enterprises to</p>	<p>sanctioning mechanism for enterprises' violations.</p> <p>In Official Letter No. 5476/BTC-CST dated May 7, 2020, responding to Vietnam Business Forum regarding to the request for refund of VAT raised before obtaining confirmation from the customs authorities on satisfaction of conditions to enjoy EPE status, the Ministry of Finance's response makes understand that EPEs are ineligible to receive tax refund because they are not subject to VAT. The Ministry of Finance however did not consider the implication of Decree 82 (the enterprises are entitled to incentives of EPEs only when obtaining the confirmation of EPE status from the customs authorities). Due to the above-mentioned problems, we find this answer inappropriate.</p> <p>Therefore, while Decree 82 has not been amended, to ensure the consistent</p>	
--	---	---	--

		<p>operate under the EPE status but usually indicate that enterprises must meet the required conditions in order to be entitled to the incentives regulated for EPEs. Therefore, when the enterprises import the machineries and equipment during the investment period for factory construction, the customs authorities do not allow the application of tax incentives of the EPEs, therefore the enterprises are obligated to pay taxes at the import stage. This creates the financial burdens on the enterprises and impacts the cash flow of the investors.</p> <p>Issue 2: Refund of VAT for the investment period (when the enterprises have not yet met the conditions to be entitled to EPE status)</p> <p>While the customs authorities collected VAT at the import stage as above, when the enterprises declare and apply for VAT refund for the investment period with the local tax authorities, the local tax authorities view that there is no base for VAT refund as per the license the enterprises are the EPEs, so are not subject to VAT.</p> <p>The above inconsistent treatment by the customs authorities and the tax authorities lead to many difficulties, obstacles for the enterprises and adversely impact the investment environment of Vietnam.</p>	<p>treatment by the different state authorities, in respect of EPEs that paid VAT upon purchasing and importing goods and services before being confirmed by the customs that they meet the conditions to enjoy the EPE status, we kindly request the Ministry of Finance to consider providing guidance that allows enterprises to declare input VAT incurred in the investment period on Form No. 02 for investment projects and be entitled to VAT refund for investment period in accordance with prevailing regulations. This is necessary to ensure the legitimate rights and benefits of the enterprises and investors.</p>	
2	Taxpayers' violation of laws other than tax law (if any)	<p>When handling taxation issues, some tax authorities tend to base on a conclusion that an enterprise violates the specialized laws to exclude from the CIT deductible expenses the</p>	<p>We request the Ministry of Finance to reconsider this issue and instruct the tax collection based on current</p>	<p>Document 5476 dated 7/5/2020 of the Ministry of Finance addressed this issue. Document 5333 dated December 9, 2019 - TCT responded to a specific case of Hai Phong.</p>

	<p>cannot be a criterion for assessing deductible expenses for CIT purposes</p>	<p>related expenditure without considering the actual costs incurred with the sufficient supporting documents, or whether or not the expenses directly relate to generating taxable revenue or not.</p> <p>In our opinion, the exclusion of the expenses from the deductibility for CIT purposes due to violation of the specialized laws is unreasonable and incompatible with the principle and basis of the CIT laws because:</p> <p>The laws on corporate income tax only stipulate that: enterprises are allowed to deduct all expenses if they meet the conditions specified in Article 6, Circular 78/2014/TT-BTC of the Ministry of Finance:</p> <p><i>Actual expenses arising in relation to production and business activities of enterprises.</i></p> <p><i>Expenses with adequate lawful invoices and documents as required by law.</i></p> <p><i>There are non- cash payment documents for expenses for purchase of goods or services with invoices valued at VND 20 million or more each time.</i></p> <p>Under the Circular, there are no binding conditions to satisfy the regulations of specialized laws.</p> <p>In case of specialized law breach, the enterprise has to be subject to fines under the sanction specified for that specialized field and the fines are not recognized for tax purposes.</p>	<p>tax regulations. If the tax treatment requires reference to other specialized regulations, that reference must be clearly codified in the tax regulations. This will ensure a transparent, consistent tax policy environment and create a basis for tax collectors and taxpayers to seriously and equally implement the provisions of the laws.</p>	
--	--	--	--	--

	<p>Moreover, in many cases, the violations are due to the objective reasons or due to certain administrative procedures which are difficult to implement in practice.</p> <p>The binding of non-tax regulations to assess corporate tax compliance is overlapping, increasing the burden of the enterprises. Other specialized laws have sanctions and the level of penalties already take into account the effect of deterring and preventing violations from recurring. The fact that the tax authorities' exclusion from the deductible expenses of the enterprises will increase the costs of non-compliance, even in many cases, the enterprise will lose business capacity.</p> <p>This guidance expands the power of tax officers to assess the reasonableness of expenses, leading to tax authorities not only assessing compliance with tax regulations but also assessing compliance with regulations outside tax. This may lead to the following consequences:</p> <ul style="list-style-type: none">- Lack of transparency, unpredictable policy: enterprises are unable to anticipate the circumstances their expenses will be excluded even if the expenses have met the deductible prescribed requirements in CIT regulations.- Unequal implementation: the requirement to meet the relevant legal requirements is too broad and general. Tax officers do not understand all other specialized laws, so there will be a situation where such excluded		
--	---	--	--

		<p>expenses in one enterprise may not be excluded similarly in other enterprises since it is subject to subjective judgement of tax officers.</p> <p>In Official Letter No. 5476 / BTC-CST dated May 7, 2020, responding to Vietnam Business Forum regarding this issue, the Ministry of Finance has guided for the enterprise that have extra expenses for overtime working of employees, for wages and insurance payment of foreign workers or promotional expenses, if they meet the requirements of tax <u>and relevant laws</u>, it will be included in deductible expenses when determining taxable income. We found that this reply of the Ministry of Finance is not satisfactory, affecting the interests of the business.</p>		
3	The point of time of revenue recognition	<p>The point time of export revenue recognition for tax purpose is stipulated in the guiding documents of several tax laws. Specifically, pursuant to Clause 2, Article 5, Circular 78/2014/TT-BTC¹, the point of time of revenue recognition for calculating taxable income is determined as follow “<i>For goods sale: the point of time when the right to ownership and/or right to use of goods is transferred to the buyer.</i>”. This regulation is consistent with the principle of recognizing revenue regulated in the Circular 200/2014/TT-BTC on corporate accounting system. Clause</p>	<p>To unify implementation, we request the Ministry of Finance / General Department of Taxation to reconsider the above issue and provide clear instructions to local tax departments on the point of time of CIT taxable revenue recognition is the time of transfer of ownership, right of use goods as specified in the</p>	<p>The timing for determination of VAT taxable turnover is not applicable for CIT calculation purposes.</p>

¹ Clause 2, Article 5, Circular 78/2014/TT-BTC dated 18 June 2014 of the Ministry of Finance guiding the implementation of regulations of Law on corporate income tax, amended by Article 3, Circular 96/2015/TT-BTC dated 22 June 2015 of the Ministry of Finance

	<p>4, Article 16, Circular 219/2013/TT-BTC providing guidance on VAT² provides that: “... The day to determine revenue from export to calculate tax is the day on which customs procedure completion is confirmed on the customs declaration”.</p> <p>As such, the point of time of recognition of export revenues under the VAT and CIT regulations/accounting regulations may not be the same as the time of confirmation of the customs procedure completion may not be the time at which ownership of goods is transferred in accordance with related parties’ agreement / applied incoterm.</p> <p>Nevertheless, in practice, in case the ownership of goods has not been transferred at the time of customs procedure completion as shown in the custom declaration (in accordance with the applied incoterm and the parties’ agreement), many local tax officers still follow the regulations on value added tax to insist that at the time on which the customs procedures is completed, the export revenue must have been recognized for CIT purpose. On such basis, the tax authorities request the enterprise to increase the corresponding CIT taxable income. Such a view of the tax authorities, in our opinions, does not align with the intention of the prevailing laws on corporate income tax and accounting regulations. Concurrently, it also raises a lot of administrative procedures to</p>	<p>Circulars guiding corporate income tax. The regulatuon on point of time for determining value added taxable turnover should not applied for CIT purposes.</p>	
--	---	--	--

² Clause 4, Article 16, Circular 219/2013/TT-BTC dated 31 December 2013 of the Ministry of Finance guiding the implementation of Law on value-added tax, amended by Clause 7, Article 3, Circular 119/2014/TT-BTC dated 25 August 2014 of the Ministry of Finance

		<p>enterprises when these enterprises prepare CIT declarations because of the difference from accounting. In addition, it will cause a lot of difficulties, frustrations, time consuming and difficult management process for enterprises, contrary to the Government's administrative reform policy, and at the same time this guidance lacks of legal basis, contrary to the CIT regulations.</p> <p>In official letter no 5476/BTC-CST dated 07 May 2020 responding Vietnam Business Forum, Ministry of Finance guilds that from 01/09/2014 in case of exporting goods, the point of time of export taxable turnovers recognition is the point of time of customs procedure completion recorded in custom declaration, which applies for CIT purpose as well. We view that the above response is not rational and appropriate.</p>		
4	<p>Vouchers for salary expenses in case foreign individuals are assigned to work in Vietnam under the form of internal assignment</p>	<p>Pursuant to Article 4 Circular 96/2015/TT-BTC guiding on Corporate Income Tax, when regulating on expenditures on wages and bonus for employees that are not deductible for tax purpose, the Circular mentions: “<i>Wages, bonuses, life insurance premiums for employees that are not specified in one of the following documents: labor contract, collective bargaining agreement, financial rules of the company, general company, corporation, reward scheme issued by the President of the Board of Directors, General Director, or Director in accordance with the financial rules of the company or general company.</i>”</p>	<p>We request Ministry of Finance to study, consider, provide guidance to supplement appointment letter as a supporting document to calculate expenditures on wages of enterprises.</p>	<p>Based on the following documents, this recommendation has insufficient basis:</p> <ul style="list-style-type: none"> - Document 5476 dated 7/5/2020 of the Ministry of Finance addressed this issue. - Decree 218/2013 of the Government <p>However, the Ministry of Finance also noted this problem for consideration and revision. The current regulations do not include any provisions on appointment letters, and we will consider amending Circular 96 on this point.</p>

		<p>In practice, in multinational corporations, experts are assigned from parent company to work for its commercial presence in Vietnam under assignment letter. Besides, labor laws recognized form of "Internal assignment", accordingly regulate that: <i>"Foreign workers internally reassigned in the company are the managers, chief executive officers, experts and technicians of a foreign enterprise which has established a commercial presence in Vietnam, are temporarily reassigned within the same enterprise to its commercial presence in Vietnam and have been employed by the foreign enterprise for at least 12 months³"</i></p> <p>Commercial presences are included: Foreign invested enterprises in Vietnam, branch, representative office of foreign companies in Vietnam....</p> <p>Upon applying for Work Permit, in case of internal assignment, requested documents include Appointment Letter of the parent company to work in Vietnam instead of labor contract as applied for case of recruitment in Vietnam. The law also does not require the enterprises and such individual to need to enter into a labor contract in this internal assignment.</p> <p>Hence, apart from labor contract, it is reasonable and considerable to regulate appointment letter as a supporting document in order to calculate enterprises' expenditure on wages for CIT calculating purpose to be</p>		
--	--	---	--	--

³ Article 3 Decree 11/2016/ND-CP dated 03 February 2016 regulates in details some articles of Labor Code on foreign employees working in Vietnam.

		aligned with international practice and labor laws.		
5	The issues in Circular 48 on provision	<p>Issue 1</p> <p>Article 4 Circular 48 regulates on provisions for devaluation of inventory as below:</p> <p><i>Provisions shall be made for materials, tools, equipment, goods, goods in transit, goods dispatched for sale, goods stored in tax-suspension warehouse, finished goods (hereinafter referred to as inventory) which have their book original prices are higher than the net realizable value and be guaranteed of conditions.</i></p> <p>Unfinished products may be in devaluation as same as other inventories, so a provision for inventory devaluation is still required. According to the old Circular 228, unfinished products are still subject to provision.</p> <p>Issue 2</p> <p>Article 1 Circular 48/2019 regulates that:</p> <p>Scope and regulated entities: Circular 48 is applied for making and handling the provisions “to determine the deductible expenses when determine taxable turnovers as regulated” meanwhile “the making of provisions for the financial statements of business organizations shall comply with law on accounting.”</p> <p>In practice, the application of the provisions of</p>	<p>We request Ministry of Finance/ General Tax Department consider supplementing, amending Circular 48 that unfinished products are also subject to provision.</p> <p>To be in line with the guidance of Circular 48, we request Ministry of Finance/General Tax Department to regulate clearly that in respect of accounting, in case enterprises do not make provision or make less provision, the enterprises</p>	<p>Previously, Circular 228 allowed making a provision for work in progress, however, there were many problems during the implementation of Circular 228. We have solicited comments on the draft amended Circular, reported the Ministry of Finance to promulgate Circular 48 replacing Circular 228 so that work-in-progress already in the accounting period is considered to have been used into production, thus provisioning for them shall not be made. In some special cases where the work-in-progress is not in the accounting period (calendar year) or in another accounting period that the applicable to the enterprises, additional considerations may be required to further revise Circular 48, such as for houses developed for sale, real estate investment. If less provision is made in compliance with the accounting law, enterprises can apply Circular 48 for the purpose of determination of expenses for CIT purposes. If there is a difference between Circular 48 (2019) and Circular 200 (2014), enterprises can rely on Accounting Standard No. 17 to perform for the difference of the taxable period.</p> <p>If the provisioning is made, it will comply with Circular 48 at the end of the accounting period. Where it is determined for the purpose of preparing and presenting the financial statements, it shall comply with the provisions of law on financial reporting. Two purposes are different.</p>

	<p>Circular 48 and the accounting regulations on provisioning may lead to some differences. For example, there are some cases where the accounting laws do not require for provision but subject to provision under Circular 48, or the provisions calculated according to the accounting laws are smaller than the provisions calculated according to the Circular 48, or the provision calculated according to accounting laws is greater than the amount calculated under the provisions of Circular 48.</p> <p>Issue 3</p> <p>Pursuant to Article 3.2 Circular 48, the making and reversal of provisions are conducted at the time of making financial statement (at the end of the period).</p> <p>In fact, there are many fast turnaround goods that need to be destroyed or liquidated in the middle of the period. At that time, the enterprise will not be able to make provisions in accordance with Circular 48.</p> <p>In addition, on the basis of the actual business situation, it may arise cases where enterprises have to destroy goods without setting up a provision in advance. The destroy of goods is a requirement of production and business activities that no enterprises wants and has actually arisen. Therefore, there should be no requirement that an enterprise must already set up a provision in order for the destroy expenses to be included in taxable expenses for CIT purposes. In common senses, the regulations in</p>	<p>are still subject to apply Circular 48 to determine expenses for calculating CIT.</p> <p>We request Ministry of Finance/ General Tax Department to consider and provide guidance in detail on tax settlement for such particular cases. Relevant expenses of goods destroy such as liquidation expense, costs of destroyed goods should be recorded in expenses for CIT calculation purpose in period without being bound by conditions of making provision in advance (in assumption of meeting conditions b), c) stipulated in Article 6.1 Circular 78).</p>	<p>At the end of the annual financial reporting period (1/1 - 31/12), the reversal and making of new provisions are conducted at the end of the year. The provisioning according to Circular 48 is the basis for the expenses that are deducted for CIT calculation purposes.</p> <p>Regarding the mid-year cancellation or liquidation of goods, the tax authority may provide more comments. We will also work with the General Department of Taxation to further study this issue.</p>
--	---	---	---

		the Circular allowing making provision is to create advantages for manufacturing enterprises to have backup sources when they have to destroy goods. Therefore, allowance on actual cost of destroying goods to be recorded for tax calculation purpose, even if there would be no prior provision in advance, is in line with the tax principle.		
6	VAT refund for investment project	<p>In accordance with point c2) Clause 3 Article 1 Circular 130/2016/TT-BTC and Official Letter No. 5580/TCT-KK dated 02 December 2016 of General Tax Department, for enterprises implementing construction investment projects that have application for VAT refund but not yet completed legal dossiers/procedures in accordance with law on investment, construction and land, they do not meet business conditions according to relevant regulations as well as conditions of VAT refund for investment project.</p> <p>In practice, when tax authorities inspect at the enterprise, even at the time of requesting for VAT refund, the enterprises already had construction license in compliance with laws on construction, tax authorities still do not agree to refund VAT in respect of invoice of the constructor under VAT refund dossier prepared before the date of issuance of Construction License.</p> <p>Enterprises need to ensure requirements on legal procedures of investment, construction, land, but if the procedures are delayed, it should not be the reason for not being refunded</p>	To avoid understanding regulations in disadvantage tendency for the enterprises in tax collection, we request Ministry of Finance to amend regulation more clearly as follows: at the time of requesting for VAT refund , if enterprises do not completed sufficiently legal dossiers/procedure in accordance with laws on investment, construction and land, the enterprise do not meet conditions of VAT refund for investment project.	<p>We agree with your proposal:</p> <ul style="list-style-type: none"> At the time of request for tax refund, if a construction permit is available, the enterprise is eligible for tax refund At the time of request for tax refund, if a construction permit is not available, the enterprise is not eligible for tax refund

		<p>VAT. Each state agency exercises its management according to its specialization; If the enterprises do not comply, it will be fined for administrative violations by specialized management agencies.</p> <p>Furthermore, the current regulations on VAT do not have any provision for not allowing VAT refund if legal procedures have been completed at the time of request for VAT refund, despite of being delayed.</p>		
7	VAT treatment on transferring of land use right attached with construction works	<p>Pursuant to provision 4 Article 5 Circular 219/2013/TT-BTC dated 31 December 2013 of Ministry of Finance guiding Law on Value Added Tax and Decree 209/2013/ND-CP dated 18 Decemer 2013, cases not being subject to declare and pay VAT includes: “4. <i>The entities, individuals that transfer projects of investment for manufacturing or trading goods/services subject to VAT to other companies or cooperatives.</i>”</p> <p>According to Article 4 Circular 219/2013/TT-BTC dated 21 December 2013, cases not being subject to VAT include land use right transfer.</p> <p>In practice, in some enterprises where the investor would like to transfer land use right attached with construction works on land to another investor and implement under process of transferring land attached with construction works. As such, the transferrer shall issue invoice as below:</p> <ul style="list-style-type: none"> Value of land use right: not apply VAT since this activity is not subject to VAT; 	<p>Since the transferrer already paid output VAT and nature of the transaction as above, we request the Ministry of Finance/General Tax Department to provide guidance to have basis for appropriate settlement for the enterprise and for other similar cases.</p>	<p><i>The case of Haseco with serviced apartments CT1, Long Bien District, Hanoi.</i></p> <p>Land use rights are not subject to VAT.</p> <p>Organizations and individuals transferring investment projects for production and/or trading of goods and services subject to VAT to enterprises shall not be required to declare and pay VAT. The transfer of an investment project shall comply with the law on investment.</p> <p>Your described case is the transfer of infrastructure. Please work in detail with Hanoi Tax Department. If it does not fall into the above case, i.e. it is determined that it is not the transfer of an investment project in compliance with the law on investment but a real estate trading operations, it will be subject to VAT. The transferee will be allowed to declare to get input VAT deduction, refund.</p>

		<p>and</p> <ul style="list-style-type: none"> Value of construction works on land: apply proper VAT rate in accordance with regulations (normally 10%). The transferrer pays output VAT corresponding with revenue of transferring construction works. <p>When the transferee applied for a refund of input VAT paid for the facility, they were rejected by the Hanoi Tax Department because the tax authority viewed that the above transfer was a project transfer activity, so it was not subject to VAT declaration and payment, while in fact the actual dossier/procedure of the company are not that as regulated for a project transfer.</p> <p>From our point of view the way of understanding and applying the above provisions of the tax authorities is of imposing nature and makes difficulties for enterprises, especially when the government had already collected output VAT of transferrer a long time ago.</p>		
8	VAT applied for services provided to EPE	<p>In accordance with Article 9 Circular 219/2013/TT-BTC dated 31 December 2013, 0% VAT is applied to exported goods and services. Exported services are those that are sold directly to overseas organizations and individuals and are consumed outside Vietnam, sold directly to the entities in free trade zones and are consumed in free trade zones.</p> <p>Clause 2 Article 1 Circular 130/2016/TT-BTC</p>	<p>We suggest the Ministry of Finance/General Tax Department to consider guiding clearly the above issue, make sure the uniform and fair application for enterprises. Specifically, services provided to an enterprise in a free trade zone</p>	<p>Although the law and guiding documents provide for the beneficiaries of the tax rate of 0%, and there are provisions on consumption outside Vietnam or in the tariff zone, it is true that there are still unclear issues about services.</p> <p>We also recognize that this is a mechanism problem, and will consider for further improvement. This is also a difficult issue, and we will try to provide for it in specific cases, if possible. But difficult cases may have to be resolved separately.</p>

		<p>providing guidelines for Decree 100/2016/ND-CP dated 01 July 2016 also regulates the cases of services provision to enterprises in free trade zone that shall not be subject to 0% VAT.</p> <p>However, in practice, some local tax authorities interpreted the regulations in the direction of only allowing 0% VAT to apply for services that are provided in the free trade zones. For services provided to an export processing enterprise but location of providing service is outside the free trade zones are still subject to 10% VAT as it is considered to be consumed outside the free trade zone, even though the service serves for production and business activities of export processing enterprises and is not included in the scope of services not being subject to 0% VAT mentioned above.</p> <p>From our point of view, the services provided to EPEs to serve for manufacturing products for sale should be understood as being consumed by EPEs. Therefore, even if the services are provided outside the free trade zone, these services should be entitled to 0% VAT.</p> <p>The application of the 10% tax rate for the above services makes the above provisions less meaningful, arising a cost burden for EPEs, causing difficulties for enterprises.</p>	<p>(including EPEs) for manufacturing products for sale by the enterprises, which are not included in the services specified in clause 2 Article 1 of Circular No. 130/2016 / TT-BTC above, should be subject to 0% tax rate.</p>	
9	Foreign exchange rate for billing and	Circular 39/2014/TT-BTC on invoices stipulates that the invoice issuing FX rate is: the FX to state in the invoice is “ <i>exchange rate</i> ”	We request that the Ministry of Finance to consider amending	Refer to Clause 3, Article 156, exchange rate for invoice issuing shall be based on revenue recognition exchange rate.

	<p>exchange rate for accounting</p> <p><i>against VND is based on the average exchange rate of inter-bank foreign exchange market announced by the State bank of Vietnam at the time the invoice is issued. If the foreign currency collected does not have an exchange rate with Vietnamese Dong, an exchange rate between that currency and another foreign currency of which the exchange rate is announced by the State bank of Vietnam shall be written”.</i></p> <p>Circular 26/2015/TT-BTC regulating the accounting foreign exchange rate: <i>“If there are revenues, expenditures, taxable prices in foreign currencies, they must be converted into Vietnamese Dong at the actual transactional foreign exchange rates according to instructions of the Ministry of Finance in Circular No. 200/2014/TT-BTC dated December 22, 2014 providing guidance on corporate accounting system:</i></p> <ul style="list-style-type: none"> <i>- The actual transactional foreign exchange rate for recording revenue is the buying rate announced by the commercial bank where the taxpayer’s account is opened. ...”</i> <p>Thus, there is a difference in the exchange rate for invoice issuance and the exchange rate for recording in the enterprise's accounting books. Meanwhile, the invoice is also an accounting and tax document which serves the accounting records.</p>	<p>Circular 39/2014/TT-BTC, accordingly the invoice issuance FX rate is identical to the revenue recognition FX rate (the buying rate of commercial banks).</p>	
10.	<p>Tax treatment to reimbursement</p> <p>The employees of the parent company are assigned to a subsidiary in Vietnam to hold the managerial position according to the "Letter of</p>	<p>We recommend the MOF consider providing guidance on non-taxation</p>	<p>General Department of Taxation provided in Clause 1 Article 1 Circular 103 (2014) on tax treatment.</p> <p>The General Department of Taxation has worked with the</p>

	<p>of salary expenses of employees seconded from the parent company under the internal assignment</p>	<p>assignment ". The cost of wages, benefits, and obligatory contributions of individuals will be paid on behalf by the parent company and charged back 100% the actual expenses incurred (at cost) for the subsidiary without ant mark-up. Subsidiaries record salary expenses.</p> <p>In fact, many tax authorities are relying on words found in the Letter of assignment such as: the dispatched employee is still an employee of the parent company/is maintained benefits under the employment contract with the parent company during secondment period to assume that the individual is not an employee of the Vietnamese subsidiary company during the time of being assigned to work at the company in Vietnam and categorize this to be a service provision, and be therefore subject to foreign contractor tax.</p> <p>We find that the above treatment is not reasonable for the following reasons:</p> <ul style="list-style-type: none"> - For the employees internally transferred within a group, the fact that a portion of their income shall be paid by the subsidiary in Vietnam to their bank account opened in Vietnam (for their expenditures during the assignment period in Vietnam) and the remaining income portion shall be paid by the overseas parent company to their bank account opened in overseas country (for long-term savings purpose or for their family's convenience in spending overseas to help the employees feel secure when working in Vietnamⁱ), 	<p>of FCT on reimbursement of employment costs of assignees to make sure that a consistent tax treatment will be adopted by local tax authorities.</p>	<p>entities under the Ministry, if the refund does not generate income, it is not subject to withholding tax in accordance with Document 17862/BTC-TCT dated December 9th, 2014</p>
--	--	--	--	--

		<p>then reimbursed by the subsidiary in Vietnam to the overseas parent company is a common international practice.</p> <ul style="list-style-type: none"> - The amounts reimbursed by Vietnam subsidiary to parent company: The reimbursement is the same as the employee costs (salary, allowance, compulsory contribution etc.) which were paid by the parent company on behalf of the Vietnam subsidiary to the employees' foreign bank accounts without any mark-up. So the parent company does not provide any services and does not earn any income from dispatching employees to Vietnam. The parent company just appoints individuals to work in subsidiaries in a certain period of time. So, the nature of these expenses is purely the salary expenses rather than service fees. - In line with Decree 11/2016/ ND-CP dated February 3, 2016 by the Government, the assignment of employees from a parent company to Vietnam for working/ holding managerial positions in Vietnamese subsidiaries is classified as an "internal transfer" (Clause 1b, Article 2), which is different from the case of "Implementing business/commercial/financial ... contracts" (Clause 1c, Article 2). FCT implication on salary cost reimbursements for internally transferred expatriates means that tax department imposes the internal transfer and the implementing service contract being the same. Such a legal 		
--	--	---	--	--

		<p>interpretation and tax treatment are unfair and not in line with current labour law as well as the normal practice.</p> <ul style="list-style-type: none">- The fact that the assignment letter specified that the assignees are still under the management of the parent company is obviously common and suitable with the normal practice because, at the time of appointment, the individual should be under the management of the parent company. So, that parent company has the right to dispatch them to work and hold a management position in a Vietnamese subsidiary. This is also completely consistent with the definition of “internal transfer”, since one of the conditions to be considered “internal transfer” must be: the dispatcher has been employed by the foreign enterprise for at least 12 months. This means that, at the time of appointment, the dispatcher must be the employee of the dispatching party. In addition, the parent company has the right to reconsider the assignment if the selected personnel are not suitable for the subsidiary.- The fact in the Letter of Appointment if mentioned: <i>"The seconded employee remains to be an employee of the parent company, enjoying the same policies as current with the Parent Company"</i> is only for the purpose of committing that the individual will be return to work at the Parent Company when the secondment		
--	--	--	--	--

		<p>period expires, help ensure benefits during the secondment period, and personally feel secure to work abroad during the secondment period. This is very common and should not change the nature that the Vietnamese subsidiary pays the salary costs to the Vietnamese side.</p> <ul style="list-style-type: none">- In fact, the appointed individual will work at the subsidiary in Vietnam during the appointment period, must comply with the regulations of the Vietnamese subsidiary, be subject to the work assignment of the Vietnamese subsidiary and their labor costs are covered by the Vietnamese subsidiary which is liable through the Parent Company. <p>In conclusion, these are the salary/wage and related employment expenses of the Vietnamese party paid on behalf by the parent company, not the service charge of the parent company, so the imposition of contractor tax is in line with the nature of the transaction.</p> <p>We note that under Official Letter 17862/BTC-TCT dated 09 December 2014, the MOF used to have a guidance on the principle that no FCT is applicable on the reimbursements of employment costs to an overseas parent company if (i) the payments made by the subsidiary in Vietnam to the overseas parent company is purely a reimbursement of costs actually incurred for employees who are internally transferred by the parent company to the subsidiary in Vietnam, and (ii) the foreign</p>		
--	--	--	--	--

		employees declared and paid personal income tax (“PIT”) sufficiently in Vietnam on their worldwide income.		
11.	Change in interpretation of law regarding allowable scope of operations of insurers and deductibility of related expenses	<p>Current common and well-established industry practice leverages on a tiered agency model, wherein an individual agent completes certain team development and recruitment referral activities, in addition to selling life insurance policies to customers. Specifically, senior agents will source potential agency candidates and perform recruitment referrals, training, share their expertise, best practices, and industry acumen and assist new agents to professionalize their customer service, enhance or refine their sales skills, manage claims for customers, and generally facilitate interactions with the insurer.</p> <p>Recently, the Insurance Supervisory Authority (ISA) appeared to adopt a new opinion that agency activities in a sales model used for many years of operations are not recognized as in-scope agency activities under law.</p> <p>Law on Insurance Business No. 24/2000/QH10 adopted 9 December 2000 by the National Assembly, Article 85 lists out the insurance agent activities as follows:</p> <ol style="list-style-type: none"> Introduce, offer insurance for sale; Arrange for conclusion of insurance contracts; Collect insurance premiums; Arrange for payment of compensation, insurance proceeds 	<p>This sudden and unannounced change is inconsistent with the market practice established by key insurance players in Vietnam and international markets and therefore would cause serious concerns to life insurance companies. The tiered-agency model is widely accepted as the most efficient and effective industry practice internationally, in terms of cost and quality. The disallowance of the deductibility of expenses related to this model will force insurance providers to rely upon more costly and less efficient options to complete the essential activities of recruitment, training and customer service.</p> <p>As such, the regulators should take a broader view to recognize the model and apply the law consistently</p>	<p>The question is not associated with a specific case, just a comment on how to interpret the issue, so it is difficult to provide an exact answer. Thus, we provide an answer in principle:</p> <p>Insurance business is a conditional business; thus, enterprise's expenses must comply with both provisions:</p> <ul style="list-style-type: none"> Law on corporate income tax: expenses included in taxable expenses must be expenses related to business and not prohibited expenses. Provisions of the Law on Insurance Business, Decree 13, Circular 50, and Circular 86 for banking operations only <p>There are 2 types of expenses: expenditures by investors, owners that are corporate capital; and Policy Fund, including revenue and expenses of the policies of the insured. The expenses must follow the regulations because they may affect the interests of the insured.</p> <p>The hierarchical agency business model is popular in Vietnam and around the world. Commissions for management and monitoring of subordinate agents incur in business operations.</p> <p>Regulations on insurance have been very open recently, all of which have been consulted with businesses. The insurance industry has faced many difficulties recently, and we have increased inspection and supervision. The inspection conclusions have been agreed with the enterprise. We are willing to listen to the discussions and opinions of businesses.</p>

		<p>upon occurrence of insured event;</p> <p>v. Carry out other activities relating to performance of insurance contracts.</p> <p>Decree No. 73/2016/ND-CP, as amended Decree No. 80/2019/ND-CP ("Decree 73"), Article 69 lists out insurance agent related expenses as follows:</p> <ul style="list-style-type: none"> a. Agent commission; b. Expense for management of insurance agents, including initial training and certification exams, advanced trainings for agents, agent recruitment, incentives and supports for agents; and c. Other expenses according to the law. <p>All recruitment referral and team development activities of agents should fall under the category of <i>other activities relating to performance of insurance contracts of Article 85 of the law</i> mentioned above, and expenses incurred for these activities should be accommodated by Article 69 of Decree 73.</p>	<p>to accept all related expenses as reasonable and legitimate expenses for CIT calculation purpose.</p>	
12.	Bancassurance fee denied to be deductible	<p>Under "bancassurance" model, insurers leverage existing bank networks and customer database to deliver products to consumers. To this end, banks and insurers cooperate, with insurance companies paying a set support fee to a cooperating bank for access to the bank's existing infrastructure, customer databases, use of facilities, geographic network, brand reputation and resources for use in distributing insurance products.</p> <p>The ISA recently disallowed the deductibility</p>	<p>Prepaid fees for banks are the most common practice in agreements on bancassurance of insurance industry, not only in Vietnam but also in other Asian markets. Insurance companies achieve immediate and long-term benefits from the partnership with banks</p>	<p>We agree that respective costs should be included in deductible expenses for CIT purposes.</p>

		<p>of expenses related to bank distribution contracts, which has threatened the market-standard model in the insurance industry.</p> <p>Joint Circular No. 86/2014/TTLT-BTC-NHNNVN of the MOF and the State Bank, Article 7.2, stipulates as follows:</p> <p>"In addition to insurance commissions, life insurance enterprises may pay agents management expenses and other expenses as provided by law and agreed in insurance agent contracts."</p> <p>The support fee paid by insurers to banks should be allowed by this provision of Joint Circular 86.</p>	<p>which are one of the important factors deciding revenue and profit growth of insurance companies. Therefore, this expense should be deductible for CIT purpose.</p>	
13.	Value-added Tax ("VAT") for imported medical devices	<p>According to Decree 36/2016/ND-CP and Decree 169/2018/ND-CP, the classification of medical devices is implemented by classifying organizations that have declared eligibility to categories medical devices, while the Ministry of Health does not do the classification.</p> <p>Despite regulations in Decree 36/2016/ND-CP and Decree 169/2018/ND-CP, tax and customs authorities now still require companies to provide certification from the Ministry of Health for imported medical devices. Specifically, certification of the Ministry of Health is required to apply VAT of 5% for medical equipment, chemicals used for testing and sterilization which is not listed under Circular 26/2015/TT-BTC and Circular 83/2014/TT-BTC. Therefore, VAT of 5% cannot be applied for many imported products which are medical devices under Decree</p>	<p>We recommend the Ministry of Finance to issue a guiding document on applying VAT for imported medical devices as soon as possible, to ensure consistent implementation with Decree 36 and Decree 169. Ministry of Finance provides a detailed timeline for amending Circular 26/2015/TT-BTC and Circular 83/2014/TT-BTC as soon as possible; and Ministry of Finance publishes draft amending Circulars for comments as per procedure of issuing legislative documents</p>	<p>Recommendations of businesses at the forum:</p> <ul style="list-style-type: none"> - Each type of medical devices should not be listed - 5% should be applied in the following cases: <ul style="list-style-type: none"> • for medical devices which have already been granted with import permits and certificates of free sale by Ministry of Health. • based on the results of classification of medical devices by independent organizations recognized by Ministry of Health to conduct classification in compliance with the law. • For medical devices not in the two cases mentioned above, they will be in Class A medical device group (not requiring a list or be certified by Ministry of Health) <p>MOF: MOF is drafting the guidelines. Enterprises can provide</p>

		<p>36/2016/ND-CP and Decree 169/2018/ND-CP, such as:</p> <ul style="list-style-type: none"> - Class A medical devices that already have the certification of declaration of applied standards issued by a Department of Health in line with Decree 36 and Decree 169; - Medical devices that have been classified as B, C or D by a classifying organization which are not in the required import license list under Circular 30/2015/TT-BYT; - Raw materials, software, accessories and medical gas identified as medical devices and classified under group A, B, C, or D. <p>The Ministry of Finance is drafting the Circular amending, supplementing Circular 83/2014/TT-BTC and guiding documents. However, Circular 26/2015/TT-BTC is also a major challenge that requires attention. This is the long-term issue and has affected deeply the importing medical devices activities.</p>	before issuance.	comments on this draft Circular.
14.	Electronic invoice: Which Decree enterprises should apply when issuing E-Invoice during the period from the date of issuance of Decree	The current regulations in Decree 123/2020 / ND-CP on invoices, vouchers only provide transitional guidance for enterprises and economic organizations that have notified the issuance of pre-printed invoices, self-printed invoices and electronic invoices without a tax authority's code or have registered to apply an E-Invoice with a tax authority's code, have purchased invoices from a tax authority before the issued date of this Decree, they can continue using invoices in use from the	To promulgate detailed guidance in case enterprises issue E-Invoices from the date of Decree 123/2020 to the effective date (June 30, 2022), which Decree should they apply: Decree 51/2010 and Decree 04/2014 or Decree 119/2018?	<p>Promulgating, application and effectiveness of Decree 123:</p> <p>According to the provisions of Circular 88 dated 30/10 of the Ministry of Finance providing guidance on e-invoices, e-invoices shall still follow the provisions of Decree 51/2010, Decree 04/2014 and Circular 32 of the Ministry of Finance and Decision 1209 in 2015 of the Ministry of Finance on pilot implementation. These documents are still effective.</p> <p>If enterprises can apply e-invoices in advance according to Decree 123, they may be allowed to apply but must issue a</p>

	123/2020 to June 30, 2022?	<p>effective date of this Decree until June 30, 2022.</p> <p>However, Decree 123 does not provide detailed guidance for enterprises issuing new E-Invoices during the period from the date of the issuance of Decree 123 (October 19, 2020) to the effective date of Decree 123 (June 30, 2022), so which Decree should they apply: Decree 51/2010 and Decree 04/2014 or Decree 119/2018?</p>	<p>If the enterprises meet the regulations of Decree 123/2020, can they apply the regulations of Decree 123/2020?</p>	<p>Document and get approval by the local tax authority.</p> <p>The progress for application of Decree 123 is different from the current process. E-invoice is a system between enterprises and tax authorities: material facilities and infrastructure between tax authorities and enterprises.</p> <p>Decree 123 clearly mentioned it and Circular 88 also clarified the effectiveness.</p> <p>Regarding administrative procedures and invoices, Decree 122 includes a new business registration form, and enterprises may register to apply for e-invoices under which regulations. If an enterprise is newly incorporated, the current regulations will apply. If e-invoices are chosen, 51, 04 and 123 will apply. At present, there are sufficient grounds for determination of effectiveness in writing. In specific cases, it is recommended to propose to the tax authority to solve specific problems.</p>
15.	Expenses in related party transaction	<p>Clause 2a Article 8 Decree 20 regulates on tax administration for enterprise engaged in transfer pricing: <i>“Except for payments referred to in Point b of this Clause, a taxpayer can claim deductions for its service costs from tax within a specified tax period when meeting the following requirements where its services rendered have commercial, financial and economic value and are directly used in business activities of a taxpayer; services rendered by related parties are confirmed as already supplied only in the same conditions under which independent parties pay for these services;”</i></p>	<p>We request the Ministry of Finance to consider the above issue and amend properly to ensure rights and interests of enterprises.</p>	<p>In fact, some local tax authorities have interpreted and applied the above regulations in the direction of only allowing a Vietnamese subsidiary to deduct service charges paid to the parent company if the parent company also provides similar services to another independent party.</p> <p>Response by GDT: This issue is probably due to incorrect interpretation. The essence here is that a transaction needs to be defined as an independent transaction, and there is no requirement for the service to be provided to both the affiliate and independent parties. The nature of the service actually determines the form – it can only be considered an expense if the service is actually provided to the affiliate. At the same time, the principle of independent transaction must be followed. It all</p>

		<p>In fact, some local tax authorities have interpreted and applied the above regulations in the direction of only allowing a Vietnamese subsidiary to deduct service charges paid to the parent company if the parent company also provides similar services to another independent party. Such regulation and application is unreasonable and unfair for the company because in reality it is not always possible for the supplier to provide the same service to many different partners. Service provision is based on the actual needs of the parties. Furthermore, in front of laws, the parent company and its subsidiary are independent legal entities, so if the parent company provides service to the subsidiary to serve the subsidiary's production activities, it is reasonable for charging services fee of the parent company. As long as transaction between two parties satisfies the requirements for the related-party transaction, as well as such transaction serves for production and business activities of the subsidiary and has all invoices and supporting documents in accordance with the provisions of the CIT law, transaction expenses need to be deducted for subsidiary.</p>	<p>lies in the principle of comparative analysis, the principle of price determination. Decree 132 itself corrects the wording, cutting the word "only", to avoid misunderstanding.</p> <p>VBF: one more small issue relates to transfer pricing. Example: one enterprise buys materials from its parent company, and sells 5 products to its parent company, and the overall profit is very good, about 6%. If each product is separated, there are products with losses and products with profits. This may be interpreted differently. Some local tax authorities consider the sale of all 5 products as a combo to the parent company, so at the end of the year total revenue minus expenses will generate good profit. Others separate each product, if the product has 12% profit, it is acceptable. If the product suffers a loss, it is necessary to adjust the profit to the above general profit rate - please state the General Department of Taxation's opinion?</p> <p>General Department of Taxation: This issue is related to specific details when performing inspection and examination, according to the principle of comparative analysis, which should be based on <u>each product & each transaction</u> – as provided in Decree 20 as well as Decree 132. Where the transactions cannot be split, they will then be combined. With a transaction that the enterprise is able to split, it is obliged to prove that the transaction is specific, for example: for a loss transaction, it must prove the specifics of the product. For example, there are certain differences in the purchase of raw materials or sale prices. When you choose the comparative transactions, you must prove them. For combination, if it is profitable as a whole, each product must follow the comparison principle specified in the Decree. Where it can be proved that the product uses the materials purchased in accordance with the independent transaction principle and its sale also in accordance with the independent transaction principle, and it still suffers a loss, if the enterprise can prove</p>
--	--	---	---

				it, it will be accepted. If the company cannot prove it, it must make an adjustment according to the regulations.
16.	Tax treatment to reimbursement of salary expenses of employees seconded from the parent company under the internal assignment	<p>The employees of the parent company are assigned to a subsidiary in Vietnam to hold the managerial position according to the "Letter of assignment ". The cost of wages, benefits, and obligatory contributions of individuals will be paid on behalf by the parent company and charged back 100% the actual expenses incurred (at cost) for the subsidiary without ant mark-up. Subsidiaries record salary expenses.</p> <p>In fact, many tax authorities are relying on words found in the Letter of assignment such as: the dispatched employee is still an employee of the parent company/is maintained benefits under the employment contract with the parent company during secondment period to assume that the individual is not an employee of the Vietnamese subsidiary company during the time of being assigned to work at the company in Vietnam and categorize this to be a service provision, and be therefore subject to foreign contractor tax.</p> <p>We find that the above treatment is not reasonable for the following reasons:</p> <ul style="list-style-type: none"> - For the employees internally transferred within a group, the fact that a portion of their income shall be paid by the subsidiary in Vietnam to their bank account opened in Vietnam (for their expenditures during the assignment period in Vietnam) and the remaining income 	<p>We recommend the MOF consider providing guidance on non-taxation of FCT on reimbursement of employment costs of assignees to make sure that a consistent tax treatment will be adopted by local tax authorities.</p>	<p>This issue is a specific one at Hanoi Tax Department. The General Department of Taxation and the entities under the Ministry have provided out opinions: the amounts that are paid or collected on behalf of other companies, if they are refunded without generating income, and are clearly shown on accounting books, no taxes will be payable. We will provide a response in writing.</p>

		<p>portion shall be paid by the overseas parent company to their bank account opened in overseas country (for long-term savings purpose or for their family's convenience in spending overseas to help the employees feel secure when working in Vietnamⁱⁱ), then reimbursed by the subsidiary in Vietnam to the overseas parent company is a common international practice.</p> <p>The amounts reimbursed by Vietnam subsidiary to parent company: The reimbursement is the same as the employee costs (salary, allowance, compulsory contribution etc.) which were paid by the parent company on behalf of the Vietnam subsidiary to the employees' foreign bank accounts without any mark-up. So the parent company does not provide any services and does not earn any income from dispatching employees to Vietnam. The parent company just appoints individuals to work in subsidiaries in a certain period of time. So, the nature of these expenses is purely the salary expenses rather than service fees.</p> <ul style="list-style-type: none"> - In line with Decree 11/2016/ ND-CP dated February 3, 2016 by the Government, the assignment of employees from a parent company to Vietnam for working/ holding managerial positions in Vietnamese subsidiaries is classified as an "internal transfer" (Clause 1b, Article 2), which is different from the case of "Implementing business/commercial/financial ... 		
--	--	---	--	--

		<p>contracts” (Clause 1c, Article 2). FCT implication on salary cost reimbursements for internally transferred expatriates means that tax department imposes the internal transfer and the implementing service contract being the same. Such a legal interpretation and tax treatment are unfair and not in line with current labour law as well as the normal practice.</p> <ul style="list-style-type: none"> - The fact that the assignment letter specified that the assignees are still under the management of the parent company is obviously common and suitable with the normal practice because, at the time of appointment, the individual should be under the management of the parent company. So, that parent company has the right to dispatch them to work and hold a management position in a Vietnamese subsidiary. This is also completely consistent with the definition of “internal transfer”, since one of the conditions to be considered “internal transfer” must be: the dispatcher has been employed by the foreign enterprise for at least 12 months. This means that, at the time of appointment, the dispatcher must be the employee of the dispatching party. In addition, the parent company has the right to reconsider the assignment if the selected personnel are not suitable for the subsidiary. - The fact in the Letter of Appointment if mentioned: <i>"The seconded employee</i> 		
--	--	---	--	--

		<p><i>remains to be an employee of the parent company, enjoying the same policies as current with the Parent Company"</i> is only for the purpose of committing that the individual will be return to work at the Parent Company when the secondment period expires, help ensure benefits during the secondment period, and personally feel secure to work abroad during the secondment period. This is very common and should not change the nature that the Vietnamese subsidiary pays the salary costs to the Vietnamese side.</p> <ul style="list-style-type: none">- In fact, the appointed individual will work at the subsidiary in Vietnam during the appointment period, must comply with the regulations of the Vietnamese subsidiary, be subject to the work assignment of the Vietnamese subsidiary and their labor costs are covered by the Vietnamese subsidiary which is liable through the Parent Company. <p>In conclusion, these are the salary/wage and related employment expenses of the Vietnamese party paid on behalf by the parent company, not the service charge of the parent company, so the imposition of contractor tax is in line with the nature of the transaction.</p> <p>We note that under Official Letter 17862/BTC-TCT dated 09 December 2014, the MOF used to have a guidance on the principle that no FCT is applicable on the reimbursements of employment costs to an overseas parent</p>		
--	--	--	--	--

		company if (i) the payments made by the subsidiary in Vietnam to the overseas parent company is purely a reimbursement of costs actually incurred for employees who are internally transferred by the parent company to the subsidiary in Vietnam, and (ii) the foreign employees declared and paid personal income tax (“PIT”) sufficiently in Vietnam on their worldwide income.		
17.	Foreign exchange for Foreign contractor tax calculation	<p>Currently, there are official letters of the General Tax Department guiding the exchange rate for calculating foreign contractor tax as follows:</p> <ul style="list-style-type: none"> - Official Letter 2049/TCT-CS of TCT dated May 28, 2018 providing general guidance which implies that the purchase exchange rate of the commercial bank where the Vietnamese party opens the bank account is applied, as this is the revenue of the foreign contractor. - Official Letter 2586/TCT-CS dated June 28, 2018 of TCT guiding the application of the selling rate of commercial banks of the Vietnamese party that pays tax on behalf of the contractor. - Official Letter 3720/TCT-CS dated October 1, 2018 providing similar guidance as that in the Official letter 2049/TCT-CS. - In fact, many tax offices are requiring the enterprises to apply the selling exchange rates of the commercial banks for calculating the foreign contractor tax. <p>The above documents of the General</p>	<p>We request the Ministry of Finance /General Tax Department to guide and clarify which exchange rate to apply for consistency.</p>	<p>According to Circular 26/2015/TT-BTC, where revenues and expenses are in a foreign currency, they must be converted into VND at the actual exchange rate. Two cases are provided in the Circular: the actual transaction exchange rate for revenue accounting is commercial bank’s buying rate, the actual transaction exchange rate for cost accounting is the commercial bank’s selling rate. Other cases shall comply with the provisions of the accounting regime. So if the contractor has opened an account with a commercial bank in Vietnam, Circular 26/2015/TT — BTC has clearly provided for this issue.</p> <p>For each specific case that is not specified in the Circular (for example, not opening an account with a commercial bank in Vietnam), specific request should be made to the General Department of Taxation for solutions or for GDT to submit to a competent authority. For example, ODA contractors without accounts in Vietnam shall be subject to a special payment mechanism, and the tax authority already issued a separate instruction.</p>

		Department of Taxation are not consistent on the exchange rate to be applied. In our opinion, this is the revenue of the foreign contractors who are the tax payers, so in order to consistent with the regulations on the exchange rate applied for conversion of revenue in foreign currencies, the purchase exchange rate of the commercial bank where the Vietnamese party opens the bank account should be applied (as the foreign contractors applying the deemed method do not have bank accounts in Vietnam).		
18.	Exemption from income tax on loans made under international treaties or commitments with the government of Vietnam	<p>There are differences in the regulations on procedures for applying tax incentives under the Law on Tax Administration in different periods, specifically.</p> <ul style="list-style-type: none"> - Circular 60/2007/TT-BTC of the Ministry of Finance (effective from 19/8/2007 to 14/4/2011): there is no regulation guiding documents and procedures for application of tax incentives according to international treaties. - Circular 156/2013/TT-BTC of the Ministry of Finance (effective from 20/12/2013 up to now): has regulations on procedures and dossiers for tax exemption. However, Circular 156 does not have the provision on retroactive application for transactions occurred before the effective date of Circular 156. <p>Therefore, in practice the following case arises: Vietnamese enterprises sign loan agreements with international financial institutions (e.g. FMO, IFC, PROPARCO ...) in the period</p>	<p>Issue 1: Proposing not to apply tax exemption procedures specified in Circular 156 for contracts signed before the effective date of Circular 156, on the basis of applying the regulations effective at the time when the transaction arises and the Circular 156 does not have provision on retroactive application.</p> <p>Issue 2: Whether the agreements between the international financial institutions and Vietnamese Government satisfies as the international treaties or not, as the Government of Vietnam has committed to exempting these</p>	<p>Application of an international agreement:</p> <p>Regarding IFC, we sent the question to SBV and agreed with SBV that if this case is under an international agreement, then its procedures shall be complied with. This case will be resolved quickly in the near future.</p> <p>Regarding the agreement with two Dutch finance companies, that are not international financial institutions: After reviewing the documents, we find that this is a transaction between the Government of Vietnam and a normal commercial company for normal lending activities, not an international institution recognized by international law as IFC. We have asked the companies to reconsider to apply the provisions of tax exemption and reduction in accordance with international agreements.</p> <p>For the cases of FMO, PROPARCO, we have sent back to the enterprises so that they may request the signatory to work with SBV to determine whether this case is an international agreement or not.</p> <p>Issue 2 needs to go back to 2 issues resolved above: Regarding procedures, if the agreed agreements are international agreements, the procedures of international</p>

	<p>before Circular 156 was issued, these international financial institutions have signed agreements with the Government of Vietnam (collectively referred to as international treaties), which contains the provision that international financial institutions are exempt from income tax (foreign contractor tax) in Vietnam. Accordingly, Vietnamese enterprises, when signing loan contracts, did not stipulate tax liability for loan interests. As there is no regulation on procedures for application of exemption or reduction at that stage, Vietnamese enterprises have sent an official letter to the tax authority for guidance, but the tax authority cannot provide guidance on the procedure.</p> <p>Issue 1: When the local tax authority inspected the business at the time Circular 156 was enacted, it proposed retrospective collection of foreign contractor tax for the period since Circular 156 came into effect because the authority views that the enterprise did not comply with requirements of procedural documents regulated in Circular 156. This is unreasonable because Circular 156 does not have provision for retroactive application for contracts occurred before the issuance date of Circular 156. Moreover, the procedure specified in Circular 156 is that "within 3 days from the date of signing the contract, the Vietnamese party must submit application...", so the deadline of submission for application of the international treaties had passed before Circular 156 was issued.</p>	<p>organizations from income tax, it is still necessary to comply with these commitments for the signed agreements. Failure to comply with commitments with international organizations can greatly affect the investment environment of Vietnam.</p>	<p>agreements shall be complied with in accordance with Circular 156. For loan contracts signed during the period before Circular 156 became effective, we will provide guidelines for them to comply with Circular 156 from its effective date (in case of an international treaty), and for loans signed during the previous period, they shall comply with the regulations applicable to such period without retroactiveness.</p> <p>In case of non-international agreements: Circular 156 does not provide that they will comply with international agreements. According to Vietnamese regulations, tax exemption or reduction shall only be provided in accordance with international agreements, where the provisions of international agreements are different from those of the law, the former will prevail. The enterprise mentioned the commitment of the Government, thus we asked the enterprise work with relevant authorities, and if the case is confirmed not under an international agreement, the Ministry of Finance will submit to the government to provide a final solution for the enterprises.</p>
--	--	---	--

		Issue 2: We understand that the Ministry of Finance is reviewing some agreements that the Government of Vietnam has signed with international financial institutions to define whether they are considered international treaties or not, thereby to evaluate the issue of whether the international financial institution is exempt from income tax when providing loan to Vietnamese enterprises.		
19.	Consistency of legal documents in tax collection by tax authorities	<p>From the practice of tax inspection in many localities, we realize that many tax authorities are applying tax policies in a negative direction for taxpayers. For the period of inspection and examination, the tax authority may collect additional tax, but does not allow the taxpayer to declare and adjust tax reduction in case the tax authority changes its view of tax handling on the previous years when the tax inspection and examination has already been carried out. We would like to give a typical case as follows:</p> <ul style="list-style-type: none"> - A company being in operation in Vietnam since 1993 and enjoys a preferential CIT rate of 15% for the entire project period. In 2007-2008, the company built a warehouse for the purpose of preserve and storing goods in better condition. The warehouse construction is derived from the company's depreciation fund. The company's total investment capital has not increased, the business lines are the same and the company has not invested in any new production lines; therefore, the company does not recognize the project as an expansion investing activity, but as a 	<p>We kindly request that the Ministry of Finance/General Department of Taxation to acknowledge the above issue and provide further guidance to the enterprises. In addition, similar issues above may also arise if other laws are applied, but has to be in compliance with the consistent application principles of the laws. Therefore, in order to avoid similar errors regards to tax treatments policies and implementations, the Ministry of Finance should consider providing a guideline on general handling principles for similar cases as above.</p>	<p>The Ministry of Finance noted that such principle was not proper. It is impossible to follow whichever way that is more beneficial for tax collection. This is the case of Dong Nai, thus the enterprise is requested to send a request to the competent authority for resolution in accordance with the process. If it is a case of inspection and complaint, it must comply with the Law on Inspection, Complaints and Denunciations.</p>

		<p>regular investment. Therefore, the company declares CIT on all income from production and business activities at the rate of 15%.</p> <ul style="list-style-type: none">- During 2007-2018, the Company has been subject to tax inspection until the end of the fiscal year 2015. During those tax inspections, the local tax department accepted the tax calculation method applied by the company. However, in 2019, when the tax department conducts tax inspection for the 2016-2017 period, they conclude that the activities mentioned above were expansion investing activity, and retrospectively collect the corporate income tax amount for the inspection period (according to ordinary tax rate of 20%) but does not allow enterprises to adjust their CIT finalization declarations for the period 2008-2015 to apply CIT incentives to expanded investment projects prior to 2009 in accordance with regulations in effect at the time of completion of warehouse construction(3-year exemption from the profitable year (2008-2010) and a 50% reduction in the following 5 years (2011-2015)) for the reason that the tax inspection process has been completed for the 2008-2015 period.- We believe that this is a shortcoming, indicating an unreasonable, inconsistent application to the same matter that is highly imposing to the enterprise because in reality, this adjustment is not made as		
--	--	---	--	--

		the result of the company discovering by itself the errors in the inspected tax dossiers but in fact, this is the issue raised by the tax authorities when that conduct the tax inspection at the enterprise for the following years.		
20.	The validity of Advance Pricing Agreement (“APA”)	<p>In the drafted Decree guiding the Law on Tax Administration No. 38/2019/QH14, there is a proposal that create obstacles and barriers to achieve the goal of attracting investment. We would like to comment on the provisions of Clause 7, Article 41 of the draft Decree guiding the Law on Tax Administration No. 38/2019 / QH14, specifically as follows:</p> <p><i>“7. The effectiveness of APA shall be counted as of the corporate income tax period immediately following the corporate income tax period when APA is duly concluded”</i></p> <p>We are of the opinion that this regulation is not in line with international practices and current regulations on APA of other countries. In most countries, the effective date of the APA is from the year when the APA application is filed. Many countries agree with recommendations and action plans proposed by the OECD, such as recognizing the APA's validity period according to the taxpayer's APA application dossier, allowing the APA deadline to be extended to passed fiscal years (“rollback”).</p> <p>However, according to Clause 7, Article 41 of the draft Decree, the APA documentation and negotiation period is not regarded as the</p>	<p>Resulting from the mentioned experience, we suggest the effective date of the APA in two options:</p> <ul style="list-style-type: none"> • Option 1: Calculated from the year of filing the taxpayer's application for APA and extended the period of application to at least five (05) previous fiscal years. • Option 2: Calculated from the year the taxpayer submits the application for APA <p>We believe that the amendment of this provision in the Draft as the options above will foster an investment environment that is truly competitive with countries</p>	<p>Regarding the recommendations for retroactive application: Ministry of Finance studied and adopted the recommendation based on international practices and the provisions of Law on Tax Administration No. 38. Accordingly, MOF reported to the Government and got approval by the Government for promulgation of Decree 126. According to Clause 7, Article 41 of the Decree: the effective date of APA complies with Clause 16, Article 3 of the Law on Tax Administration. Thus it is clearly specified in the law and the law must be complied with. For bilateral and multilateral APA agreements related to tax administration, Ministry of Finance shall report to the Government for consideration and decision. Thus, the decree was promulgated with some differences from the draft. We have noted, adopted the recommendations and revisions that are different from the draft. In that case the Ministry of Finance will report to the competent authority/ Government to decide whether the retroactive application is permitted or not.</p>

		<p>effective date of the APA. Specifically, there will be a difference in the effective period of the APA between Vietnam and its partner countries in the APA agreement (For example, Japan, Korea), creating difficulty in the negotiation process leading to failure in APA negotiation.</p> <p>In addition, pursuant to point 2.7, the Action No. 14 on Base Erosion and Profit Shifting (BEPS) which Vietnam committed to when participating in the Inclusive Framework on BEPS, countries implementing APA Bilateral application should allow rollback APA application in appropriate circumstances.</p> <p>We identify Indonesia as a typical case in ASEAN. Indonesia had a provision that is like Clause 7, Article 41 above regarding the period of validity of the APA that the APA shall be in effect from the year that APA document is signed and does not allow the outcome of negotiations to be applied for the past period. However, in an assessment of the implementation of the OECD's tax dispute resolution program, Indonesia had to amend this provision and allow the APA to apply as proposed by the taxpayer's APA application dossier and expanded the applicable period to previous fiscal years (as guided by Action No. 14 above) as recommended by OECD.</p>	<p>in the region as well as avoids causing international disputes and is in line with OECD recommendations in BEPS Action Agenda 14. This is also to support, save time/effort of many investors from Japan, Korea, USA ... who are in the process of consulting APA document with the General Department of Taxation or are in the final stage which is the Tax Authority of Vietnam and the Foreign Tax Authority negotiating bilateral APA document of taxpayers from 2013 to date. We perceive that the resolution of this issue is to demonstrate the spirit of transparency, building Vietnamese legal regulations in line with international practices and promoting stronger foreign investment attraction given the context that Vietnam had the Covid-19 pandemic well under control.</p>	
21.	Processing time for evaluating	The Ministry of Finance issued Circular 201/2013 / TT-BTC dated December 20, 2013,	From the reality of applying APA in Vietnam,	MOF's comments: The procedures were actually very slow. This problem arises due to the implementation of APAs

	<p>Advance Pricing Agreements (APA) application</p>	<p>Guidance on Application of Advance Pricing Agreements to Tax Administration. Up to now, Circular 201 has been issued for nearly 7 years, however, there have not been any APA of enterprises approved by the Ministry of Finance.</p> <p>In fact, many enterprises have completed the negotiation and discussion stages with the General Department of Taxation for a long time and completed phase 4 - discussion and negotiation of APA contents. The General Department of Taxation has also transferred the APA dossiers of the companies to the Ministry of Finance for seeking comments and approval but did not receive any approval from the Ministry of Finance.</p>	<p>the processing time for submitting and negotiating the APA dossiers is too long without approval from the authorities (Ministry of Finance / General Department of Taxation), affecting the companies' plan such as incurring cost burden on businesses.</p> <p>Accordingly, the Ministry of Finance / General Department of Taxation please kindly take measures to accelerate the evaluating process of APA dossiers to create conditions for enterprises to stabilize their business plans as well as comply with Vietnam's tax regulations.</p>	<p>in accordance with the old mechanism in Law 21, Decree 83 and Circular 201. The Ministry of Finance has also recognized the issues and is studying to prepare a new Circular to replace Circular 201 to apply APAs in accordance with recommendations/ international practices and experiences, in accordance with the Law on Tax Administration & Decree 126. The enterprises' difficulties have been recognized. APA mechanism will be improved in the law on tax administration in Vietnam in the coming time.</p> <p>Enterprises' comments: We hope that the Government will accelerate the adoption of APA. There are some difficulties related to prices.</p> <ul style="list-style-type: none"> • Some local tax authorities use private/confidential databases. Enterprises do not know which database the tax authority is using. It is necessary to publicly disclose the database used by the tax authorities. • At the end of the year, companies may have their profits adjusted to decrease or increase for many reasons. We hope that MOF will consider amending the regulations to allow businesses to make both modifications. Many companies have moved and will move their supply chains to Vietnam. There will be many flows of transactions such as import & export. Transfer pricing and determination of linkages are important. If we want to promote Vietnam's supply chain & Vietnam's position in these supply chains, we need to overcome and solve the existing issues related to transfer pricing. <p>MOF's comments on adjustment for reduction: If the enterprises wish to propose for any changes, they must request for revision of the Law on Tax Administration, not Decree 132 or Decree 20. Moreover, in the early stage, Vietnam is likely to protect the rights of taxation and Vietnamese</p>
--	--	--	--	---

				enterprises still conduct simple functions with low risk. Most enterprises will not incur losses. In the next stage, if Vietnam develops chains of transactions, with more developed functions, the adjustment for reduction may also be considered, yet it will require a revision of the Law on Tax Administration.
22.	The selection of comparable companies during the determination inter-quartile range in determining transfer price for related party transactions	<p>Decree 20/2017 / ND-CP dated 24 February 2017 ("Decree 20") and Circular 41/2017 / TT-BTC dated April 28, 2017, effective from 1 May 2017 on tax administration for enterprises engaged in transfer pricing, with the subjects of application are Commodity or service production and business entities that pay corporate income tax according to the declaration method and performing transactions with related parties. In the guidance on application of the method for comparing the profit margin, Point b, Clause 2, Article 7, Decree 20 stipulates that: <i>"Application principle: Profit-comparison method shall be applied according to the principle that there is none of differences in operational functions, assets and risks; economic conditions and accounting and bookkeeping methods taken into consideration in a comparison thereof between taxpayers and independent comparable have material effects on the profit margin. Where there are material differences in profit margins, then these material differences must be eliminated..."</i></p> <p>In the practical application of Decree 20 during tax and transfer pricing inspections, taxpayers are often required to demonstrate that material differences between comparable companies and taxpayers have been removed.</p>	The Ministry of Finance/General Department of Taxation consider providing specific guidance on the selection of comparable companies process and the elimination of material differences process in order to help taxpayers comply with the regulations on determination of the price of related-parties transaction.	Regarding Decree 20 & Regulation 132 replacing Decree 132, Circular 41 on to price adjustment. At the end of the year, when re-determining the price declaration, experiences of some countries were mentioned, reflecting a relation to the rate of return. During the year, when the contract is signed, the accounting price & the norm price can be based on for contract signing between the two parties. The price for signing of product manufacturing contracts: it may be signed at the beginning of the year, but during the year it may fluctuate from the estimate. It is entirely possible for two parties to agree and sign a contract appendix for adjustment of the price during the year, not necessarily waiting until the end of the year. If it requests to adjust only at the end of the year with such rate of return, the request should be reviewed. Now not Decree 20, but Law on tax administration No. 38 - Clause 5, Article 42 clearly provides for the principle of declaration and determination of taxable prices of related-party transactions: prices of related-party transactions shall be adjusted according to independent transactions to declare payable tax in the principle that it does not decrease the payable corporate income tax. If you want to revise this provision, the tax administration law needs to be revised.

		<p>Specifically, there were cases that tax officer adopted criteria of “percentage of expenses reflecting function of taxpayer” / “scale of revenue” at their discretion to reject the set of selected comparable of taxpayers presented in the local file even this comparability process had been done very comprehensive with due diligence.</p> <p>The fact that even the commercial database used in declaration, determination and management of transfer prices has a lot of potential comparable but it is impossible to identify the identical comparable with the taxpayer (with the same “percentage of expenses reflecting function of taxpayer” / “scale of revenue” as example above). Therefore, in the practical application of Decree 20, the search and selection of comparable companies are often extended to relevant economic sub-sectors and extended to countries in the region (such as ASEAN region or the Asia-Pacific region) and then companies with similar overall functions are selected. Accordingly, the requirement of regulation that most of the material differences mentioned in the Point b, Clause 2, Article 7, Decree 20 may be not satisfied and this created difficulties for taxpayers in selecting comparable and may create opportunity for tax officer to adjust the result of transfer pricing audit case at their discretion.</p>		
23.	Point of time for CIT imposition on	Article 12.7 of Circular No. 156/2013/TT-BTC, as amended by Circular No. 151/2014/TT-BTC (" Circular 156 ") requires	The tax authorities should comply with the provisions of law, which	Article 12.7 of Circular No. 156/2013/TT-BTC, as amended by Circular No. 151/2014/TT-BTC (" Circular 156 ") has clearly states that the date of signing will not be applied, but

	<p>the capital assignment tax</p>	<p>that corporate income tax with respect to capital transfer be paid within 10 days from:</p> <ul style="list-style-type: none"> i. the date <u>the competent authority approves of the capital transfer</u> or, ii. <u>the date of capital transfer</u> as agreed by sellers and purchasers in capital transfer agreement, if such capital transfer is not subject to approval of the competent authority. <p>This provision of Circular 156 aligns with that of Circular No. 78/2014/TT-BTC ("Circular 78"), which provides that time of determination of income from capital transfer is the time of transferring capital ownership. This means that, CIT is incurred upon the transfer of ownership.</p> <p>As such, under scenario (i) where the capital transfer is subject to approval, the deadline for declaring and paying CIT will be 10th day from the date of such approval. This scenario should be the case of transfer of capital of a limited liability company ("LLC"). Particularly, under the Enterprise Law, the ownership of capital of an LLC is officially recognized under the LLC's enterprise registration certificate ("ERC") issued by the provincial department of planning and investment ("DPI"). Therefore, a change in members of an LLC will trigger the amendment of its ERC. Accordingly, 10 days from the date of approval of the capital transfer by the competent authority should be understood as 10 days from the date of the</p>	<p>do not count the tax payment deadline from signing date but from transfer date. To avoid discretionary interpretation by the local tax authorities, the MOF may consider issuing a written guidance to the local tax authorities in respect of this issue.</p>	<p>the date of capital transfer as agreed by the parties in the contract.</p> <p>Any case of improper treatment shall be submitted to the direct administrative authority for resolution.</p> <p>There may be issues related to the transfer within a joint stock company and consideration may be required to make revision of the general mechanism in a proper manner. If a quick fix is needed, it may need to be handled on a case by case basis.</p>
--	--	--	---	--

	<p>amended ERC which certifies the ownership of buyers.</p> <p>Under scenario (ii) where the capital transfer is not approval, the deadline for declaring and paying CIT will be 10th day from the date of transfer as provided under the capital transfer agreement. This should be the case of transfer of capital of a joint stock company ("JSC") where the ownership of shares is not recognized in that JSC's ERC but in its shareholder register. As such, a change in shareholders of a JSC will not trigger amendment to its ERC. Accordingly, CIT must be paid within 10 days from the date of transfer agreed by sellers and buyers (usually when target companies update their shareholder register and satisfaction of certain conditions). In most of the cases, especially high-profile or high value M&A transactions, the date of transfer is not and cannot be the signing date of the capital transfer agreement given that both parties have to perform a number of contractual obligations to consummate the transfer (e.g. pre-notice to third parties, termination of certain contracts, repaying certain loans, nominating new board members, etc.).</p> <p>However, in practice, some local tax authorities (including the Ho Chi Minh City tax authorities) take the view that deadline for CIT filing and payment is counted from the signing date of capital transfer agreement under scenario (ii) while the transfer date provided in capital transfer agreements is not the signing date.</p>		
--	--	--	--

		<p>This interpretation and approach of the tax authorities is not in line with both CIT and corporate regulations: taxpayers must pay tax when they have not derived taxable income (taxable income is deemed incurred only upon the transfer of ownership, and the transfer of ownership is done via the issuance of an amended ERC or update to shareholder register, or satisfaction of certain conditions agreed by sellers and buyers). It is also not suitable with M&A practice (transfer date is not signing date but usually months after the signing date). Therefore, parties to M&A transactions face many difficulties in satisfying this requirement of the tax authorities. Specifically, in the worst-case scenario where one transaction cannot be done after the signing date (e.g. one party walks away, one of the parties breaches the transfer agreement, etc.), i.e. no transfer of ownership of capital, it would be problematic for both taxpayers and the tax authorities if tax has been paid upon the signing of the agreement (no guidance on how to claim tax refund in such a case).</p>		
24.	Registration Tax-Fee	<p>To continue removing difficulties for production and business, promoting disbursement, public investment and securing social security in the context of the COVID-19 pandemic, the Government Office proposed to “reduce excise tax by 50per cent when registering domestically manufactured and assembled cars by the end of 2020 to stimulate domestic consumption”. Currently, buyers of cars with less than 9 seats in Vietnam are</p>	<p>We request the removal of discriminatory taxation reduction applying only to locally assembled vehicles, and recommend applying to all automotive assemblers, importers and dealers of new vehicles the reduction of 50 per cent of the registration fee.</p>	<p>The Government promulgated a decree for reduction of registration fee by 50% during a very short period until end of 2020.</p>

		<p>subject to a 10 per cent registration fee, or 12 per cent for residents of Hanoi. With the Prime Minister's Decision to reduce the registration fee, buyers of domestically manufactured and assembled vehicles will only have to pay a fee of 5-6 per cent. Those who buy cars imported from abroad still have to pay registration fees of 10-12 per cent depending on the locality.</p> <p>Currently within domestic car companies in joint ventures, only two European brands - Mercedes and Peugeot - out of 19 imported in Vietnam will benefit on their locally assembled models.</p> <p>Stimulating consumption in the automotive market is necessary as customers struggle to maintain their activities. Furthermore, it will take time for supply chain disruption to be resolved. To invoke a national crisis for a temporary remedy supporting national preference is not relevant at a time when COVID-19 is clearly a global issue.</p>	<p>Furthermore, we recommend a 50 per cent reduction of VAT and of excise tax.</p>	
25.	Tax year of 12 consecutive month period from the 1st arrival date to Vietnam	<p>Under the current regulations, in case an individual stays in Vietnam for less than 183 days in a calendar year but for 183 days or more in the 12-consecutive-month period from the 1st arrival date to Vietnam, his/her 1st tax year is the 12-consecutive-month period from the 1st arrival date to Vietnam and the 2nd tax years onwards are the calendar years. In practice, many controversial issues have incurred in relation to those regulations as below:</p>	<p>We recommend the MOF consider removing cross-year finalization to simplify the tax administrative procedures, avoid the inconsistent interpretation of tax regulations, as well as bring them in line with international practice.</p>	<p>I would like explain why the tax law of Vietnam required 12 consecutive months from the first day of arrival in Vietnam. When developing the law, we already considered between calculating PIT by calendar year from the first year, or by 12 consecutive months from the first year, because some foreigners only work in Vietnam for a very short time spanning over 2 years. In order to cut administrative procedures & simplify the tax determination, recently we counted 12 consecutive months. If 12 consecutive months are not adopted during this first period, tax finalization will be split into two years. According to international practices, even if a person works for only 1 month in Vietnam during a</p>

	<ul style="list-style-type: none"> - The determination of the “1st arrival date” might be ambiguous. For example: if the expatriate went on a vacation in Vietnam before his/her official assignment in Vietnam, which date is considered his/her 1st arrival date to Vietnam? if the expatriate travels to Vietnam in many times and many years, is there only a 1st arrival date to Vietnam or many 1st arrivals dates, corresponding to each trip? - In determining the outstanding PIT upon the 2nd tax year’s finalization, under the current regulations, the tax deductible for the overlapped period is the allocated tax obligation of the 1st tax year instead of the tax actually paid for the overlapped period. Therefore, in case the monthly income of the individual fluctuates significantly, an overpaid/underpaid tax can be incurred in the 2nd year’s tax finalization although the monthly PIT has been calculated and paid correctly and sufficiently. - In case the expatriate stays in Vietnam for more than 182 days the 12 consecutive month period from the 1st arrival date to Vietnam but less than 183 days in the 2nd calendar year, the tax declaration for the 2nd tax year has not been clearly provided for: is the individual considered a tax non-resident of the full 2nd tax year and subject to tax finalization from his/her arrival month to 31/12 of the 1st year? if he/she is required to finalize tax for the cross year, how is PIT for the overlapped period deductible against 	<p>calendar year (the duration of stay in Vietnam is over 183 days with relative visits or traveling), this leads to the provision on personal residence. Therefore, for individuals working in Vietnam for shorter periods, we apply the principle of 12 consecutive months, which will greatly reduce administrative procedures, simplify the tax payment for foreigners. For individuals staying in Vietnam for more than 12 consecutive months, there will be duplication related to tax finalization of the following year. It may be difficult to determine the duplicated taxable income. To choose between 2 options, we will still choose the option of 12 consecutive months in the first year.</p> <ul style="list-style-type: none"> - How is the "first day in Vietnam" determined? The current documents on personal income tax fail to clearly provide for this, leading to many issues. The "first day" is not the first day of the person's normal life, but the "first day" of a working period, a working contract. An individual can come to Vietnam to work many times, under different contracts, under different work programs. The "first day" here means the first day in such program. - Regarding to the spanning over two years, how is the tax for the 2nd year finalized? We also have the principle that when an individual arrives in Vietnam on the first day of the work contract, that first day is based on the work contract. If the contract has a working term of more than 183 days, that the individual is considered a resident. In the second year, even if the work duration is only 3 months, the tax payment must be calculated continuously according to the resident status. If in the second year, an individual returns to his home country right after the end of the contract and not returns to Vietnam, there is a principle to redetermine his/her status of residence. If he/she is present in Vietnam for less than 183 days, his/her status of residence will be re-determined & the tax
--	--	--

		<p>his/her PIT obligation of the 2nd year.</p> <ul style="list-style-type: none"> - Tax year in tax declaration software (HTKK) is on a full month basis. Therefore, the tax filing due date might be incorrectly calculated by the tax management database system, resulting in a time-consuming reconciliation and late payment interest calculation procedure for the tax authorities and the taxpayers (if any). - The concept of “12 consecutive month period” is uncommon in tax regulations of many countries (e.g. Laos, Myanmar, Malaysia, Singapore, Philippines & Thailand, Korea). As a consequence, the taxpayers might face difficulties in application of the tax residence certificates and foreign tax credit due to different tax years. 		<p>finalization shall follow the non-resident status. But the redetermination of residency will have to wait until end of that calendar year, not at the time the individual returns home. If the work term is more than 183 days according to the original contract, the tax will still be paid as the resident status.</p> <ul style="list-style-type: none"> - On the application for tax declaration, the monthly basis is currently use, causing difficulties for the tax authorities to calculate the late payment penalty. When calculating the late payment penalty by the tax authority, the deadline is calculated by month. If the personal income tax arises from the first day, on the 30th or 15th of the month, the deadline for tax declaration is still that month. A penalty is calculated on a month basis, not the time of the income generation which cannot be changed. - Globally and regionally, many countries only apply the calendar year as tax year, e.g. Laos, Myanmar, Malaysia, Singapore, Philippines, Thailand, Korea. Therefore, individuals who are citizens of these countries will have difficulty in applying for certification of personal tax residency and withholding of taxes paid abroad because the tax year is not similar. <p>⇒ We drafted the regulation with the aim of reducing administrative procedures, if later you can provide us with more experience from other countries where such provisions are made for a certain reason & to be more beneficial to the tax payers, we are willing to make changes to the next law if possible.</p> <p>⇒ All these countries have signed treaties for the avoidance of double taxation with Vietnam, thus the treaties shall prevail, not the law. The tax deduction shall follow the clear provisions of the treaties, if any.</p>
--	--	---	--	--

26.	Declaration of Vietnam-sourced income of short-term business travelers to Vietnam	<p>According to the current regulations, it is understood that the foreigners coming to Vietnam to work for even only 01 day are still obliged to declare PIT in Vietnam on the Vietnam-sourced income portion they received in overseas country. In fact, those strict regulations make the tax compliance impossible, especially if the individual goes to Vietnam for business trip purpose for only several days.</p> <p>In the world, many countries provide for some exemption thresholds for PIT declaration for the business travelers, for instance:</p> <ul style="list-style-type: none"> - United States: the number of days in the US does not exceed 90 days/year or US-sourced income does not exceed USD3,000/year - India: the number of days in India does not exceed 90 days/year - Malaysia, Singapore: the number of days in these countries does not exceed 60 days/year. <p>Besides, as per the labor regulations, the expatriates are also exempted from work permit application if they work in Vietnam for less than 30 days/trip or 90 days/year.</p>	<p>We would like to recommend the MOF specify a threshold of days for the short-term business travelers to be exempted from PIT declaration in Vietnam on their Vietnam-sourced income portion received overseas provided so that the Vietnamese regulations are in line with international practice and the compliance of tax regulations become more feasible to the taxpayers.</p>	<p>Vietnam's PIT law was developed in line with international practices, especially the treaties for the avoidance of double taxation. We signed almost 80 treaties for the avoidance of double taxation. The Law also ensures general tax regulations: PIT in Vietnam is taxed by resident or non-resident status, not by number of days in Vietnam, not by presence. In many cases, a person is not present in Vietnam for a single day is still considered a resident. It is difficult to base on the duration of presence in Vietnam, especially in the current economy, the time of 4.0, even if a person is not in Vietnam a single day, they can still work normally. It is also difficult for us to set a threshold for how many days of to be taxable.</p> <p>We would like to note that it is necessary consider the proper tax rate, if only based on the number of days of presence in Vietnam, and ignoring the huge income that people earn in Vietnam, it will be unreasonable, not in line with international agreements & practices, and it is not fair for Vietnam. Thus we would like to note that, for short stay & low pay, or no pay, there may be a threshold for income paid by Vietnam.</p>
ISSUES RELATED TO BANKING WORKING GROUP				
27.	Application of value added tax ("vat") on letter of credit (l/c) services	<ul style="list-style-type: none"> ▪ All commercial banks in Vietnam have consistently treated earnings from issuing and processing of L/C as being not subject to VAT. The legal basis for such VAT treatment is as follows: 	<p>Not apply VAT on the L/C forms having nature of credit extensions or bank guarantees in accordance with the spirit of Law on</p>	<p>The Ministry of Finance has submitted a written report to the Prime Minister's Office, requesting the State Bank of Vietnam to study and submit to the competent authorities to specify which L/C service is a credit granting service, which L/C service is payment service via account.</p>

		<ul style="list-style-type: none"> – Pursuant to all applicable circulars providing guidance on VAT through each period from 2009 to date issued by the Ministry of Finance⁴, it is clearly stated that "<i>payment guarantee</i>" is a form of credit extensions not subject to VAT. – Pursuant to Official Letter No. 11754/BTC-CST dated 6 September 2010 issue by the Ministry of Finance to Tax Departments of provinces and cities under the jurisdiction of the central government providing guidance on VAT for earnings from the provision of credit extension services, it clearly indicates that: <i>Letter of Credit (L/C): Letter of Credit (L/C) is a method of international payment guarantee, a payment commitment of the issuing bank (the bank of the buyer) in nature, ensuring that the buyer will pay for the purchase of goods to the seller when the conditions specified in the L/C is carried out fully and properly. If the buyer does not pay by the due date, the issuing bank shall make a mandatory loan to the buyer to proceed the committed</i> 	<p>Credit Institutions 2010, Law on VAT and their guiding regulations.</p> <p>If the executive authorities change the application of VAT towards L/C forms having nature of credit extensions or bank guarantees that treatment should apply from now on and there will be no tax collection, nor imposition of administrative penalties and late tax payment for the past years. However, in order to do so, we are of the view that Law on Credit Institutions and its guiding regulations and Law on VAT need to be updated.</p>	
--	--	--	---	--

⁴ Including: Circular No. 129/2008/TT-BTC dated 26 December 2008 (applicable from 18 January 2009 to 29 February 2012, Circular No. 06/2012/TT-BTC dated 11 January 2012 (applicable from 1 March 2012 to 31 December 2013), Circular No. 219/2013/TT-BTC dated 31 December 2013 (amended, supplemented by Circular No. 151/2014/TT-BTC and Circular No. 26/2015/TT-BTC – applicable from 1 January 2014 to date)

		<p><i>payment to the seller. Therefore, the earnings from issuance, confirmation, notification of L/C are the earnings from guarantee not subject to VAT.</i></p> <ul style="list-style-type: none"> ▪ However, during tax audits/ inspections conducted by the GDT and State Audit from 2018 to date at banks (one of those is HSBC Vietnam), the tax authorities have generated different viewpoint and after spending long periods studying and considering, they have decided to apply 10% VAT on all L/C products of the banks and collected under-declared tax, administrative penalties, and late payment interest. <p>Based on the tax audit conclusions at the banks, we understand the legal basis that the competent authorities have referred to and concluded about the application of 10% VAT for the L/C services from 1 January 2011 is based on Items 15 and 18, Article 4 and Article 98, Law on credit institutions No. 47/2010/QH12 dated 16 June 2010 issued by National Assembly (effective from 1 January 2011) (“Law on Credit Institutions 2010”).</p> <p>Official Letter 1606/TCT-DNL dated 22 April 2020 sending to all tax departments across the country considers L/C simply a mean of payment via a bank account without having a guarantee element or a credit extension, hence would be subject to VAT and requested to review the collection of VAT at local banks for the provision of letter of credit services, BWG</p>		
--	--	---	--	--

		<p>is of the view that, the interpretation by the competent authorities that all forms of L/C (with or without deposits) are forms of "payment service provision" being subject to VAT; instead of looking at the nature of each transaction to assess the credit risk of each product and take them as "bank guarantee" - which is a form of credit provision services being not subject to VAT. The interpretation by the competent authorities is not entirely appropriate and does not fully reflect the nature of the L/C services according to banking convention as well as the detailed spirit of Law on Credit Institution 2010. We would like to present the following standpoints:</p> <ul style="list-style-type: none">• <i>L/C is not a pure bank payment service but also includes the provision of credit through a commitment to issue in the form of a letter of credit.</i>• <i>According to Circular No. 22/2017/TT-NHNN, commitments in L/C operations are recorded in accounting accounts equivalent to the accounting accounts to record other commitments, including guarantee commitments.</i>• <i>It is unreasonable and inappropriate to apply the changed VAT treatment retrospectively back to almost 10 years and this will cause financial losses to the banking industry as well as the enterprises having export and import activities.</i>		
--	--	--	--	--

28.	Withholding and paying tax by individuals abroad having e-commerce business activities generating income from Vietnam	<p>Law on Tax administration No. 38/2019 / QH14, Clause 3 Article 27 - Duties and powers of commercial banks ("Commercial banks") stipulates:</p> <p><i>“3. Withholding and paying on behalf of the payable tax obligations in accordance with the tax laws of organizations and individuals abroad having e-commerce business activities that generate income from Vietnam”.</i></p> <p>Decree 126/2020 / ND-CP regulating a number of articles of the Law on Tax Administration providing more specific regulations on the duties and powers of commercial banks ("commercial banks"), organizations providing intermediary payment services. payment in Clause 3, Article 30.</p> <p>With the current regulations, the bank faces many difficulties and problems if it is required to determine, deduct and pay the tax obligations on behalf of overseas organizations and individuals engaged in e-commerce business that have income generated from Vietnam, specifically:</p> <ul style="list-style-type: none"> - Part of the commercial activity can be done by the parties electronically (for example, the parties can order or transact via the Internet, email, pay by card, payment application, etc. .); the delivery / provision of services can be made in Vietnam or overseas. Therefore, the bank cannot determine whether the aforementioned transactions are taxable. Moreover, it is also impossible to determine the goods / 	<p>To propose the Government, the Ministry of Finance, the General Department of Taxation, and the State Bank to consider and guide in detail so that commercial banks can comply with the provisions of Clause 3, Article 30 of Decree 126 on the basis of avoiding overlaps in tax declaration and payment by obligors (Vietnamese buying goods, acquiring banks, foreign organizations / individuals), avoiding double tax collection for 1 transaction, in accordance with reality, international practice, at the same time, to avoid commercial banks having to perform tax calculation and withholding activities and take responsibility outside the bank's scope of operations, avoiding disputes and risks arising for the commercial Bank. Accordingly, we recommend that the government agencies provide guidance that the responsibility to pay tax would be bear by the</p>	<p>It is clearly specified in Article 27 of Law 38 that foreigners with income in Vietnam must pay tax. The tax withholding of foreign individuals is provided by the Government in Article 30 Decree 126, where foreign suppliers with no establishment in Vietnam and conduct e-commerce business operations in accordance with Clause 3 Article 27 of the Decree, the commercial banks acting as a payment intermediary shall withhold the tax. The General Department of Taxation shall work with relevant agencies to disclose information of foreign entities.</p> <p>Where a foreign individual makes payment in another form that the commercial bank cannot withhold the tax, the commercial bank shall notify the tax authority.</p> <p>Clause 4, Article 7, Decree 70/2014 provides for one-way remittance by Vietnamese people abroad, according to which the General Department of Taxation is responsible for review for residents and non-residents. Law 38 and Decree 126 and Decree 70 also clearly provide for the remittance of foreign currencies abroad. It will be more difficult for the entities to coordinate with the tax authorities because this regulation was not available before, but the withholding will help the tax authorities to collect taxes in a more sufficient manner. The Government is very concerned about this issue in e-commerce transactions. Currently Law 38 has provided for this issue and came into force. We hope banks and regulators will try to carry out:</p> <ul style="list-style-type: none"> - Direct withholding - Not direct withholding, then information is sent to the regulator. <p>I very much share the difficulties with the workload increases, but I hope the banks will share the difficulties and make efforts in doing it.</p> <p>This is a new and difficult problem in the immediate time. The Ministry of Finance will provide a Circular guiding Law 38 and Decree 126, including a seminar related to banks and will hold discussions on this issue to improve and make it</p>
-----	--	---	---	---

		<p>services that are provided and consumed in Vietnam or outside of Vietnam, it is impossible to determine which transaction serves the business, which transaction serves the consumer needs (For for business transactions that already have the subject responsible for tax declaration, if the bank does it again, it will be double tax), the transaction cannot be done if the bank deducts tax because then, the actual amount paid will be less than the amount requested to pay => the payment cannot be processed.</p> <p>- The application of this regulation will incur additional administrative costs for commercial banks (“commercial banks”) due to the large number of transactions:</p> <p>By consulting some guidelines on tax treatment for e-commerce transactions of the European Commission, we learned that European countries do not require Commercial Banks to withhold tax for these transactions. Instead, depending on the nature of the transaction / agreement in the contract, the owners of the electronic content (content owners) or intermediary organizations are responsible to register, declare and pay taxes directly to tax authorities.</p>	<p>parties in the purchase and sale of goods, while the tax deduction, payment by the bank would be only at the request of tax authorities or as authorized / requested by organizations or individuals abroad having e-commerce business activities that generate income from Vietnam for each case and tax amount must be specific.</p> <p>The Ministry of Finance and the State Bank of Vietnam consider and issue specific instructions for other related contents and tasks, including tax refund for counterfeit transactions.</p>	<p>realistic. The banks can participate to provide direct or written comments.</p>
29.	The tax identification number in the account opening file	<p>According to Clause 3, Article 35 of the Law on Tax administration No. 38/2019 / QH14, using the tax identification number specified:</p> <p><i>“4. Commercial banks, other credit institutions must write tax identification numbers in the</i></p>	<p>To propose the Government, the Ministry of Finance, the General Department of Taxation, and the State Bank to</p>	<p>The General Department of Taxation received comments from VBF and the press raising the difficulties related to Decree 126 on the responsibilities of commercial banks in providing account information and payment transactions made at commercial banks. We would like to confirm that the</p>

	<p>and the documents of the transaction via the account.</p>	<p><i>application file to open the account and the documents of transactions through the taxpayer's account.</i>”.</p> <p>With regard to this content of the Law on Tax Administration, banks respectfully request to have more guidance and on specify types of transaction documents through taxpayers' accounts because the banking system's documents are diverse and typical. If this regulation applies to all transaction documents via bank accounts, banks will face many difficulties to comply with this term, specifically:</p> <ul style="list-style-type: none"> - Some bank documents according to international convention and practice - Foreign bank branches will follow the Core-banking system of the parent banks and apply to all branches in the world. - Many bank documents are for internal management purposes only or provide additional information, it is not necessary to add a Tax ID number. - Many customers do not have Tax ID information 	<p>consider and provide detailed instructions so that commercial banks can comply with the provisions of Clause 3, Article 30 of Decree 126 to avoid overlapping in tax declaration and payment of obligors (Vietnamese end buying goods, bank settlements, foreign organizations / individuals), avoid double tax collection for one transaction, in accordance with practice and international practice, at the same time, avoid commercial banks having to perform tax calculation, deduction activities and take responsibility outside its scope of operations; avoid disputes and risks for commercial banks. Accordingly, we recommend that your Agencies provide guidance on the responsibility to pay tax of parties in purchase and sale of goods, deduction, payment on behalf only if commercial banks currently at the request of tax authorities or as</p>	<p>requirements for taxpayers to include tax codes in economic transactions and payment transactions were already included in Law No. 78 in 2007. During implementation, there may be differences. In Law 38, and in Decrees on business registration linked to tax authorities and information on tax registration, we are requiring tax payers to be responsible to notify their bank account numbers with commercial banks and the validity of these accounts, and to report any changes to bank account information, and they have to declare with the tax authorities when they change their banks first, then through the one-stop shop for business registration. Currently, the database of the tax authority includes all information on bank account number, name, age, and tax code of the taxpayer that is disclosed by the taxpayers themselves.</p> <p>In order to reform the administrative procedures, we have solicited opinions and transferred this responsibility to commercial banks to act on behalf of taxpayers when customers open accounts. According to the provisions of the Law on Enterprises and the Law on Tax Administration, the customers/enterprises are required to provide the tax code/enterprise number to the commercial banks. According to the provisions of the Law on Tax Administration 2007, all payment documents require taxpayers to provide tax codes. The enterprises making payment via banks already provide this information, yet most core banking/bank database have not stored this data. When banks extract their databases for tax authorities, some banks store this information while others do not, i.e not directly in the core banking, but in the external data storage system, or budget collection system.... Among the 55 banks connected with the General Department of Taxation for exchanging budget information, some banks already have tax code data, to support taxpayers with e-tax payment, and taxpayer accounts opened with banks include their tax codes.</p>
--	---	--	--	--

			<p>authorized / requested by organizations or individuals abroad having e-commerce business activities that generate income from Vietnam for each case and tax amount must be specific.</p> <p>The Ministry of Finance and the State Bank of Vietnam consider and issue specific instructions for other related contents and tasks, including tax refund for counterfeit transactions.</p>	<p>We are surveying the current state of the commercial banks' database, including 55 banks that have worked with the tax authorities to assess the possibility that banks can experience transitional period and provide more tax code information.</p> <p>Previously, the tax codes were stored in hard copies at the bank, now banks can input it into the database, thereby being able to provide account number information to the tax authority as well as payment transaction information at the request of heads of tax authorities related to taxpayers with signs of tax law violation.</p> <p>I also discussed and explained to Dan Tri newspaper early today: the provision of taxpayers' information does not mean that banks shall automatically provide the information, but the heads of the tax authorities will request in writing, and the request will only be made when a taxpayer is subject to tax inspection, i.e. there are signs of high risk and signs of law violation. As for the provision of account registration information, it is a former requirement applicable to enterprises and now it is transferred to the banks to act on behalf of the business, to support its customers to provide information to the tax authorities using their existing databases. The tax authorities shall be fully responsible for the confidentiality of this information in accordance with the provisions of the Law on Tax Administration 78 and the current Law 38, only changing the role of the taxpayer.</p> <p>To assess this change, we intend to prepare regulations for cooperation with commercial banks on electronic provision of information and will work with commercial banks on the deadline for meeting the requirements by commercial banks, i.e. to have a roadmap for development of their databases. Therefore, according to Decree 126, banks will provide all information in the first time, and only changed information for the following times. While banks have not yet provided the information, we will implement the Decree</p>
--	--	--	--	--

			<p>on Enterprise Registration, meaning that taxpayers will have to register their account numbers through business registration. And in the Decree on business registration to replace Decrees 78 and 108, we remove the requirement that enterprises must declare bank account information when registering a business linked to the tax authority because we already obtained bank account information from banks. This saves the society a lot thanks to the reduction of preparation of papers and making single registration. Commercial banks using database and information infrastructure to make one transaction to transfer data to the tax authorities, aiming for great benefits for the society.</p> <p>We hereby confirm that transactions not related to payment and determination of the revenue, expenses and tax obligations of taxpayers shall not be required by the tax authority, and those transactions are inside the bank because we do not request for the submission of such information. In the near future, when issuing a regulation with the State Bank of Vietnam classifying each transaction, we will also study carefully to determine which transaction must include a tax code. Currently, the purchase and sale transaction that the taxpayer must pay through the bank is a transaction worth 20 million dong or more to be determined as taxable expense, it is considered related to revenues and expenses, and is related to the determination of tax obligations for which tax identification numbers must be recorded in each transaction. For individuals, we will also discuss prudently with banks to evaluate the feasibility, and to develop a roadmap and the deadline for this requirement. For example, the number of individuals is huge and General Department of Taxation will provide a database of all taxpayers who have a tax code in the state of closed, and banks will continue to review their customers' information with tax codes input for comparison, but the time of updating will be specific, e.g. it is difficult to request for a tax code for a person who has not made a transaction for a long time. And when we provide</p>
--	--	--	--

				<p>information to banks, there will be information for reference such as identity card and passport for checking check personal accounts with Banks, when the individual taxpayers come to the banks for the transaction, guiding them to supplement tax code information, to follow core banking of the bank. There will be a coordinated mechanism, and the tax authorities will provide information to assist banks and individuals with additional provision of account information.</p> <p>There will be a separate meeting, carefully reviewing each document to have an appropriate roadmap.</p>
--	--	--	--	---

ENERGY DAY

8:00 – 11:15, Thursday, 3 December, 2020
Sofitel Legend Metropole, Hanoi

MEETING MINUTES**LIST OF PARTICIPANTS****Representatives from Government:**

1. Mr. Do Nhat Hoang, Director General of Foreign Investment Department, MPI
2. Mr. Ngo Chi Linh, Deputy Head of Policy Department of Procurement Management Department, MPI
3. Mr. Do Duc Quan, Deputy Director of the Electricity and Renewable Energy Authority, MOIT
4. Mr. Nguyen Ninh Hai, Head of Renewable Energy Department, Electricity and Renewable Energy Authority, MOIT
5. Mr. Tran Tue Quang, Deputy Director of Electricity Regulatory Authority, MOIT
6. Mr. Bui Huu Quang, Energy Efficiency and Sustainable Development Department, MOIT
7. Mr. Tran Manh Hung, Head of Energy Economics Department, Institute of Energy
8. Mrs. To Thi Phuong Anh, Specialist, Department of General Economic Affairs, MOFA
9. Mr. Nguyen Ngoc Trung, Deputy Director, Industrial Department, CEC

Representatives from VBF:

1. Mr. Hong Sun, Representative of Korea Chamber of Commerce in Vietnam
2. Mr. Tetsu Funayama, Representative of Japanese Chamber of Commerce and Industry in Vietnam
3. Mr. Denzel Eades, Representative of British Chamber of Commerce Vietnam
4. Mr. Tomaso Andreatta, Representative of European Chamber of Commerce in Vietnam
5. Mrs. Virginia Foote, Representative of American Chamber of Commerce in Vietnam
6. Mr. John Rockhold, Head of VBF Power & Energy Working Group
7. Mr. Tran Tuan Phong, Co-Head of VBF Infrastructure WG

And more than 45 participants from businesses under VBF Chambers.

SUMMARY OF MAIN DISCUSSION CONTENTS**1. Regarding the resumption of nuclear power plants**

MOIT's Electricity and Renewable Energy Authority (EREA)'s response:

Currently, the National Assembly of Vietnam has halted Vietnam's nuclear power development. In Resolution 55 of the Politburo, the Institute of Energy and related agencies are assigned to resume research on this source of energy with the goal of developing a sustainable energy sector with the lowest cost under Vietnam's current context. Simulations to calculate nuclear power in PDP8 show that by 2030, preconditions in terms of human, technical, legal resources, etc. are not sufficient to develop nuclear power. Therefore, nuclear energy development will be conditional on the maturity of the energy sector and the economy in general of Vietnam.

2. Regarding the recommendation to prioritize renewable energy in the new national power development planning (PDP8) Feed-in-Tariffs (FIT) extension and a new FIT for wind power

MOIT's response:

- **Regarding extension of wind power's FIT2 price:** MOIT is now consulting ministries, agencies, and business community, but the feedback received is quite divided (extension, no extension, bidding mechanism, etc.), so MOIT will consider grouping different audiences and finalize the draft internally to extend and recalculate wind power FIT price to suit the world market and Vietnam's wind power development conditions. This draft will be finalized internally before being submitted to the Government for consideration and decision.
- **Rooftop solar power:** Rooftop solar power has witnessed remarkable development with more than 72,000 solar power systems and a total capacity of 2300MW.
 - **Increase the capacity of rooftop solar power and behind-the-meter solar power:** MOIT is now studying the overall impacts on EVN's electricity supply. When building factories and industrial parks in Vietnam, EVN has invested in power supply system. In the event of switching to solar power, it is necessary to have a reimbursement mechanism and share the costs incurred, and ensure adequate supply of base power when using solar and wind power. However, we will take into account the Chamber's proposals for research and improvement in the coming time.
 - **Rooftop solar power FIT price:** will expire after 2020, however, MOIT and international and domestic consultants are further researching and reviewing equipment production prices and Vietnam's current market conditions to align fixed price for solar power in the near future if it is still applied.
 - **Large-scale solar power:** MOIT has drafted a bidding mechanism, covering name to the pilot program, to determine the solar power selling price after 2020 (for those approved and included in the masterplan) when the FIT price is no longer applied and is now consulting ministries and agencies for refining the draft before submitting to the Government. It is expected to be first applied for solar power and further improved with the support of the World Bank and ADB before being replicated for wind power.
 - **Offshore wind power:** Even the name suggests certain issues when defining an offshore wind power depth of 80m. In Vietnam, depth varies across different areas, in the Mekong River Delta, the depth is about 10m at around 10-20km away from the shore while in the central region, it only requires 1 or 2km away from the shore to reach this depth. Therefore, MOIT needs further research to determine the right policies for the right subjects. In Resolution 55, the orientation is to consider offshore wind power development with an appropriate FIT pricing mechanism.
 - **Improve PPAs:** Currently, PPAs have been executed for more than 6000MW of solar power and nearly 3000MW of wind power, the current mechanisms are appealing to investors. Currently, PPAs are being applied for fixed electricity price, the Chambers' recommendations related to sponsor/Government risk sharing will be considered in the future bidding mechanisms. For now, they will not be considered in the PPA during FIT price stage.

3. Recommendation to improve bankability and appropriate allocation of risks in renewables Power Purchase Agreement (PPA) templates and Licensing Requirements for Rooftop Solar

Electricity Regulatory Authority of Vietnam (ERAV)'s responses:

- Clauses in the standard PPAs in terms of force majeure, contract termination and regulatory changes: demonstrated in Articles 10, 12.
- Exemption threshold from the requirement to obtain Power Operation License for rooftop solar power from 1MW to 3MW: Circular 18, Clause 4, Article 5; Decision 13; and MOIT's Official Document 7088 include regulations and support for investors to acquire many solar power systems with capacity larger than 1MW.

4. About Energy Efficiency campaigns

Responses from MOIT's Energy Efficiency and Sustainable Development Department:

- Vietnam has adopted the Law on Energy Efficiency and implemented many programs on energy efficiency with contributions to ensure energy security.
- In March 13, 2019, the National program on Energy Efficiency was approved with the goal of achieving 5-7% by 2025, and 8-10% by 2030. Proposed 9 groups of solutions:
 - Improve legal framework,
 - Provide financial and technical support in the field of energy efficiency
 - Establish a national data center
 - Build capacity
 - Increased legal checks
 - Promote communication
 - Promote international cooperation
 - Develop science and technology to enable energy efficiency
 - Establish an energy efficiency fund for sustainable operation
 - Communication has been identified as one of the priorities and there have been programs to communicate energy efficiency solutions on newspapers, electronic newspapers, television, and contests suitable for all levels, sectors, organizations, women's unions, schools, etc. In industry, contests have been organized to raise awareness of energy efficiency.

5. Update on PDP8 and Coal in Structure of power sources

Responses from Institute of Energy:

- *Update on PDP8:* The draft has been submitted to MOIT for sending to ministries and agencies for consultation and refinement.
 - The growth rate of power demands in recent years is 10.5% and forecast to reach 8-9% in 2021-2030 period with power demand mounting up to 490 billion kWh.
 - Structure of power sources by 2030: RE electricity will account for 30% (currently less than 10%), clean energy (LNG) is also focused in PDP8. Regarding coal power, projects that have been approved in the revised PDP7 will continue to be implemented but we have

no intention of introducing new coal-fired power projects after 2030. It is expected that by 2045, RE will account for over 40%. RE development orientations demonstrate the Vietnamese Government's commitments to the world.

- Financing needs: more than USD 13 billion on average each year for power generation and grid projects (in which power generation represents 73%) in 2021-2030 period. It requires enabling mechanisms and policies to attract funds for catering such financing needs.

6. Regarding all recommendation relating to the Law on Investment in Public-Private-Partnership Modality (PPP Law)

Responses from MPI's Public Procurement Agency:

- The Law on PPP will take effect as of January 01, 2021. The draft Decree guiding the Law on PPP has been submitted to the Government for approval and is expected to be issued and effective at the same time as the Law on PPP. In the course of completing PPP legal framework from Decree 15 up to now, i.e. the Law on PPP, MPI's Public Procurement Agency has been benefiting from many comments from the business community, especially VBF.
- **Regarding the scale of power PPP projects**, the scale of large power projects in the energy sector invested in the PPP form is VND 1,500 billion or higher, and power projects in renewable energy are from VND 500 billion.
- **Regarding transitional issue**, in the process of finalizing the draft Decree to be submitted to the Government, MPI coordinated with MOIT to organize working sessions on the transitional clauses in BOT power projects. However, in the opinion of Ministry of Justice, there should be no specific provisions for BOT power projects. Therefore, in the draft submitted to the Government, the transitional clause is only a general transition clause applicable to all projects, with lots of timelines being added to ensure maximum support for projects in general to overcome their challenges. According to Clause 8, Article 90 of the draft Decree, BOT projects that have been signed or whose investment agreement has been signed before the effective date of the Law on PPP will not be subject to renegotiation and can proceed to contract finalization and execution, which will be performed in accordance with the Law on PPP.
- **Regarding Government Guarantees and Undertakings Agreements (GGUs)**, currently there is no basis for GGUs in the Law on Investment 2020 and the Law on PPP. Decree 63 previously mentioned commitment to fulfill the State's obligations, but in essence, GGUs cover multiple commitments. According to the Law on PPP, GGU covers two forms, namely revenue risk sharing mechanisms and availability of foreign currencies. Regarding availability of foreign currencies, MPI has worked with SBV and SBV just wants to maintain a guarantee of 30% of revenues in VND after subtracting expenditures in VND according to Decision 1604. According to the draft Decree submitted to the Government, for important PPP projects whose investment policies are subject to the National Assembly's approval, the Prime Minister shall base himself on foreign exchange management policies and availability of foreign currencies from time to time to ensure the foreign currency availability at 30%. If this is applied massively, it will affect public debt repayment in general.
- **Revenue risk sharing mechanisms** are only applied if the Vietnamese government introduces regulatory changes which directly impacts the project implementation and project contracts (e.g. road projects). Permission to apply must be granted during the approval of investment policies. Ongoing power projects that will transition to new regulations will be entitled to apply this mechanism.

- **Regarding the applicable law**, according to Ministry of Justice, only Vietnamese law is allowed in the contracts. According to the current Law on PPP, with respect to the matters that are not regulated under Vietnamese law, the parties may reach specific agreements in a PPP contract without applying any other laws.
- **Regarding the exemption of land use fees**, mortgage over land use rights is not allowed, this issue relates to the land law, so it is not part of the PPP law or the Decree guiding the PPP law.
- **Regarding the mortgage of sea area use rights**, in the process of developing the Law on PPP, no agency had proposed this, so there was no basis to include in the Law on PPP. We have discussed this issue with JCCI and will discuss further with MONRE to obtain a clearer answer on this content, this may not be included in the current draft decree but may in the future when the law is amended, there will be clearer regulations.

CONCLUSION

- In 2021, VBF will continue to work with the Government of Vietnam on the recommendations related to power generation plan and then the electricity and semiconductor industries, among others. VBF would like to thank the Government for the opportunity for direct discussion with the Government senior experts/ officials. VBF hopes to further work with the Government in the coming year on the topics and programs of mutual interest.
- MPI extended warmest thanks to parties for practical and dedicated recommendations to help with policy improvement in support of investors. All the comments of today's discussion will be taken into consideration. Issues raised without satisfactory responses due to restrictions of the participating units' mandate will be forwarded to the relevant ministries for further comments and answers or for organizing similar working sessions in the future.

ANNUAL VIETNAM BUSINESS FORUM 2020

MEETING BETWEEN PRIME MINISTER NGUYEN XUAN PHUC AND VIETNAM BUSINESS FORUM ON DECEMBER 10, 2020

SUMMARY

OPENING

KEY NOTES ADDRESSED BY H.E.MR. NGUYEN XUAN PHUC, PRIME MINISTER

The government listens to and understands your difficulties in such a challenging year as 2020, though we have been considered good compared to other countries with better growth this year. According to the “Global Connectedness Index 2020”, Vietnam achieved impressive performance - ranked 5th for trade connectedness (up 5 ranks), while the majority of countries in the top 10 recorded a decrease or the same position. Vietnam’s HDI index to be announced is also high, and the competitive index is also good. However, the year 2021 will be a difficult and challenging year. Vietnam's supply chains and important partners have also faced difficulties and challenges, yet we have a good development space, in a stable country, always supporting different economic sectors, including foreign invested enterprises.

The Government is keen to listen and understand your problems and see what we can address, because for the past 23 years VBF Forum and the business community have been accompanying the Government, the authorities, and sectors, providing a lot of useful recommendations to improve our business and investment environment. Vietnamese business community has been growing in both quantity and potential, contributing to our economy’s better growth and more intensive and extensive international integration. We know that in order for the country to develop, the business community and economic sectors have to strongly develop, particularly foreign investors, Vietnamese enterprises, Vietnamese private enterprises, cooperatives and private households. As a saying goes “many a little makes a mickle”, I wish that we will play our part to contribute to a better Vietnamese economy in the coming time.

Mr. Hong Sun, Co-Chairman, Vietnam Business Forum Consortium

The ratification of European Union - Vietnam Free Trade Agreement (EVFTA) in June serves as an advantage to help boost Vietnamese production, trade and investment in the coming time. And we fully believe that the Vietnam - UK Free Trade Agreement will be signed soon.

During the past year, with the support from the Ministries and sectors, Business Forum Vietnam with 11 working groups have held multiple technical meetings, contributing to removing the barriers in terms of regulations and policies in a timely manner for our member businesses, contributing to promote their production and business recovery.

In order for the economic recovery to take place in a more rapid and stronger manner, we believe that Vietnam should focus on two groups of issues, including:

- Continuing to strongly implement Resolution No. 52-NQ/TW on guidelines and policies for actively participating in the Fourth Industrial Revolution.
- Disseminating the spirit of Resolution No. 55-NQ/TW on the orientation of national energy development strategy, which is a very much proper pathway, in line with the national socio-economic development goals, meeting practical needs as well as demonstrating a long-term and open vision of the Government of Vietnam.

Mr. Kyle F. Kelhofer, Senior Country Manager for Vietnam, Laos and Cambodia, IFC

Without a doubt, Vietnam's success in combating COVID-19 further strengthens the case as a destination of choice for manufacturing, higher tech agriculture, smart logistics, ICT and services. In the global economic race, thanks to COVID measures, Vietnam has a good head start. It is also an opportunity to do the needful upgrades and policy changes to economically run faster -- be more efficient, productive, fewer business bottlenecks – and economically run longer – to be more sustainable and less resource incentive.

In step with creating an environment for the private sector to thrive, further reforms are needed to seize these investment expansion and reallocation opportunities, also increasingly include more domestic value added and spill-over effects. While encouraging existing investors here to expand their footprint in Vietnam. This requires a step change to recognize that Ease of doing business is key to attracting the right type of investors – not the Cost of doing business.

We encourage the responsive government, like agile businesses, to adopt a strategic outlook and pragmatism in seeking creative ways to adapt the economy.

SPEECHES BY 7 CHAMBERS OF COMMERCE

Dr. Vu Tien Loc, President, Vietnam Chamber of Commerce and Industry

To continue supporting the business community, we would like to recommend to the Government and the Prime Minister the following solutions:

- Continuing to well implement the solutions and support packages that have been announced. The scope and duration of the support packages should be expanded, and the duration for exemption - reduction – extension – postponement should be longer to support businesses.
- In addition to the general support packages for large number of beneficiaries, there should also be support packages that focus on some key areas. Recently, the Government has taken measures such as funding support for VNA or reduction of import tax for automobile components and parts to support domestic automobile manufacturing, etc. We would like to recommend the expanding of such measures to a number of other very important sectors of the Vietnamese economy, which are experiencing temporary difficulties but are capable of a strong breakthrough after the pandemic.
- To strengthen the connection between FDI and domestic enterprises, we would like to recommend that the Government submits to the National Assembly to pass the Law on Supporting Industries to enhance capacity of domestic SMEs to participate in the global supply chains.
- Please promptly develop the Decree guiding the Law on Public-Private Partnerships to promote strong investment in infrastructure by both public and private funds.
- Please promptly summarize the implementation and prepare the new Resolution 35 new and Resolution 02 on the development of enterprises and improvement of the business environment for the next period.
- In the documents submitted to the Party Congress in the coming time, the requirements for sustainable development and promotion of sustainable development programs in the Vietnamese economy should be emphasized.

Mr. Yun Ok Hyon, Chairman, Korean Chamber of Commerce in Vietnam

First of all, I highly appreciate the Vietnamese Government for the supports shown to the Korean businesses especially for the special entry into Vietnam. Recently, the two countries reached the agreement that businessmen who are planning a business trip to Vietnam for less than 14 days will be exempted from mandatory quarantine while following strict quarantine guidelines set by the Vietnamese authorities during their stay. I strongly believe that this business-friendly action will be so much helpful to boost the both of Korean and Vietnamese economy under COVID-19 situation.

Secondly, I would like to raise some license issues of Korean investors in Vietnam. Under COVID 19, Vietnamese Government has implemented various favorable policies to support companies to overcome the pandemic's economic situation. But licensing for some Korean large-size projects in Hanoi and Ho Chi Minh city have been delayed due to lack of clear legal instructions and this caused many difficulties in investment activities. We sincerely hope Prime Minister to understand this situation, and instruct MPI to provide guidance to all local authorities, make sure they all have a consistent understanding.

Mr. Kazunori Sudo, Chairman, Japanese Chamber of Commerce and Industry in Vietnam

I got the chance to visit a province with Ambassador Yamada, Embassy of Japan. During that time, I was explained about their initiative which is called "10 Promises". The promises begin with "securing a 24-hour power supply" and includes "issuing investment licenses within 3 days", "simplifying administrative procedures", "fostering good quality workers", "supporting to facilitate investment license changes and investment business expansion procedures", "implementing electronic tariff procedures", "preventing strikes and disputes", "establishing hotlines in the People's Committee" and "resolving investors' demands promptly". This includes most of the challenges that Japanese companies face as we continue our business activities in Vietnam.

I thought about the background of these promises and there was no doubt that it was the result of the provincial governments listening sincerely to the challenges of Japanese companies in the province. At the same time, a prediction crosses my mind that if similar initiatives spread throughout Vietnam, investors will invest more in Vietnam at ease.

There are differences in administrative systems and business practices between Vietnam and Japan and it is difficult to accept the difference. However, bridging these differences through the efforts of both parties seems to be an important theme for Japanese companies to continue our business activities in Vietnam and for Vietnam to attract more FDI in the future. We would like to ask the support of the Vietnamese Government to achieve this with a broad perspective.

Mr Warrick Cleine, Board Member, British Chamber of Commerce in Vietnam

British companies in Vietnam are very active in contributing to financial services sector, from capital market sector, to the life sciences, pharmaceutical & healthcare sectors. All are very critical to Vietnam.

British Chamber has made some detailed recommendations to the Prime Minister in relation to banking, capital markets and financial services which is designed to facilitate the easier raising of capital through bonds and equity markets, also facilitate banking services, and accelerated adoption for example of e-signatures & e-commerce.

In relation to the healthcare sector & pharmaceutical and life sciences, testing for Covid and the development of a vaccine for Covid-19 are global priorities.

It's important that Vietnamese Government continues to work on its border issues & the ability of people to travel in & out of Vietnam for business reasons, to facilitate commerce, & support the economic recovery of Vietnam & around the world. Some specific areas that we recommend the Government should focus on is risk-based assessment of travel partners and countries such as Singapore, Korea, Thailand, where Covid-19 is controlled, we should look at & facilitate for easier immigration.

Mr. Tomaso Andreatta, Vice Chairman, European Chamber of Commerce in Vietnam

The implementation of EVFTA will remain the top priority for EuroCham. Taking full advantage of this agreement will be key to the success of Vietnam and Vietnamese companies in the future. The concern we have about the work permit is that, after 4 years we will not be able to stay in Vietnam, please clarify this is not the case so we can stay in Vietnam. The Education and Training working group asks for doctors, professors can come here without work permit for short courses at universities in Vietnam. As it's mentioned by Dr. Loc, the PPP law is also a very important agenda.

It should also set an increase in the standard for vehicle pollution to soon match current European standards.

In terms of facilitating pharmaceutical companies' operations, the revision of Drug Registration regulations should also be treated as an important agenda and needed to be addressed. to ensure the quality and safety of medicines for patient treatment, and enable the smooth implementation of the drug registration timelines set out in the Pharma Law and its guiding regulations, which are widely appreciated.

For tourism: To assist in sustaining the sector and helping staff and to mitigate the socio-economic impact: for the Government to create a fund through the banking system, whereby companies in the sector can borrow, with no security. There should be an expansion of visa-exempt countries and extending the visa exemption period from 15 to 30 days, providing short-stay visa exemption for business travelers.

Mrs. Virginia Foote, Chairman, American Chamber of Commerce in Vietnam

First, the **digital economy**, e-commerce, e-banking, fintech, modern cloud computing and e-government, the goal of Vietnam to reduce face-to-face transactions and enhance Vietnam's goal to reduce the use of cash overall. We foreign companies are intertwined with your domestic companies and hope the technological and regulatory requirements particular on cyber security can further help – not hurt – that process while being mindful of global standards being developed.

The second area we are very supportive of it are the plans for a **cleaner environment and a cleaner energy future**. We remain concerned of the ongoing dominant of coal in drafts of PDP8 and hope it can be reconsidered. Coal is now dangerous to the environment and no longer a less expensive technology. We would like to work with you on renewables, transmission, LNG and offshore gas, all of which could be accelerated and help you reduce the use of coal.

Particularly, we suggest the government look at reducing the very high tax burden on the development of your offshore gas reserves – which has been up to 50-60% on your own resources.

Levelizing tax across LNG and offshore, and providing tax and tariffs incentives for solar, wind, and biomass can help make up the difference.

And third, we know you have prioritized **administrative reform** on two particular areas. One is to look at the regulatory regime that is hurting the ability for our companies to import. The second is the tax system that is heavily focused on audits and reassessment. It is very difficult for our companies to be in a more predictable environment. We hope to see the use of Advance Pricing Agreements (APA) which creates the stability and predictability necessary for our companies integrating into valuable global supply chains, which of course is Vietnam's priority.

Mr. Seck Yee Chung, Vice President, Singapore Business Group

We are encouraged by the e-government initiatives and encourage the Government to adopt more online procedures in licensing. We hope to see authorities adopt and soon accept e-signatures.

Vietnam is a new M&A Destination. It is useful for the health of the market. However, the provisions are very broad, there is a lot of ambiguity in the interpretation of this regulation, which will require further guidance/clarification.

Investments in logistics and warehouse are growing. Sometimes there is a lack of clarity and guidance. We commit to work with authorities more on this issue.

CLOSING

Mrs. Carolyn Turk, Country Director, World Bank

We have heard so many ways business can be supported through this difficult time, recovering from the Covid crisis. In order to keep a long-term perspective on the recovery, I'd like to echo some of the points made by Chambers. There are a large number of investments that can be made on the public side, that will facilitate the green growth path going forward.

As Vietnam has led the world in the response to Covid, Vietnam will be leading the world in the recovery from Covid & can lead the pathway in green recovery. There are many potential investments in the renewable energy sector, water treatment, solid waste management, in control of plastic. From the World Bank Group's perspective, we believe that having the clean recovery is not just a nice thing to do because everything is cleaner, but it is also going to make Vietnam competitive into the medium and long-term. We are very happy to work with the government of Vietnam on a sustainable growth path, on the definition of green growth strategy, which could include finance arrangement for many aspects of renewable energy & upholding environmental standards.

CLOSING REMARKS BY H.E.MR. NGUYEN XUAN PHUC, PRIME MINISTER

I have listened and noted all the insightful viewpoints present today. I understand that VBF is a crucial and effective policy dialogue channel connecting the business community and the Government, helping towards the successful realization of economic growth and sustainable development goals in the broader world. The Ministry of Planning and Investment has been assigned by the Prime Minister to act as the focal point in generalizing all issues and work directly with the ministries on responses. Urgent issues like online licensing, e-signature, some tax issues, capital markets, etc., are among the bottlenecks to tackle.

Although positive growth amidst the pandemic crisis is encouraging, Vietnam still need to address many limitations, especially the investment environment and competitive index, which are the Government's priorities for handling in the coming time. Second, dealing with Vietnam's infrastructure issues, socio-economic infrastructure issues, energy, and high logistics costs will require our close attention. Third, it is necessary to develop a more transparent and favorable market regulations. Fourth, technology application, e-government, and digital economy need to be promoted to facilitate investments in business development.

Now that Covid is fundamentally put under control, Vietnam is poised to achieve two goals: protect public health & boost economic production. Regarding mobility between Vietnam and Japan or South Korea, etc., we will reopen flights in the near future when the pandemic is well controlled and appropriate measures are taken. Currently, the pandemic is still rampant in South Korea, Japan, the United States or the UK, etc., so regrettably we cannot open the border as wide as we wish. The Government of Vietnam remains committed to more drastic reforms to facilitate development. We call upon the investors to: combat transfer pricing, tax evasion, and tax base erosion. The Government will listen to, remove inequalities and create favorable conditions for enterprises, we perceive it as our top mission. On the other hand, we will also review & rectify shortcomings and delays causing difficulties at the ministries and localities. Institutional transparency is also of paramount importance. The National e-Service Portal is expanding to facilitate most convenient and fastest connection for all investors.

We will further study the recommendation on tax rates as proposed by AmCham in Ms. Virginia Foote's presentation. Issues raised by IFC, WB & other delegates today will be responded by Deputy Minister of Planning & Investment Mr. Tran Duy Dong on behalf of the Government at the coming Annual VBF 2020.

Regarding what to do to attract investment flows into Vietnam? The problem sometimes not only rests with the Government and localities but also requires investors' cooperation and adjustment. Therefore, we aim towards mutual benefits and mutual development. These include effective and substantive implementation of programs in localities and business supporting industries, including SMEs. You are encouraged to report limitations in industries, especially environment, land, customs, tax issues, directly to me, I undertake to handle these stringently to create a better investment environment. In the coming year-end VBF 2020, the ministries will respond on issues that can be directly resolved under their mandate, as for issues falling under the authority of the Prime Minister, the MPI will report to the Office of the Government for resolution in the best interest of businesses. We have established a Working Group to promote investment cooperation led by Deputy Prime Minister Pham Binh Minh to advise the Prime Minister with international mechanisms, policies, criteria and standards and solutions to attract foreign investors.

ANNUAL VIENAM BUSINESS FORUM 2019
Hanoi, January 10, 2020

**ROLES AND RESPONSIBILITIES OF FDI COMMUNITY
IN RAPID & SUSTAINABLE DEVELOPMENT**

SUMMARY

OPENING

Mr. Nguyen Chi Dung, Minister of Planning and Investment

The year 2019 was an important premise for Vietnam to firmly step into 2020, a year of special importance for the Vietnamese economy, because it was the last year to implement the 5-year socio-economic development plan for the period of 2016 - 2020, also a year to prepare and create momentum for the next 5-year plan as well as the next 10-year strategy.

After more than 30 years of attracting and using FDI, the Ministry of Planning and Investment has advised the Government to submit to the Politburo to promulgate Resolution No. 50 on the orientation for improvement of institutions, policies, and for enhancement of quality and efficiency of foreign investment cooperation until 2030. In the coming time, Vietnam will proactively attract foreign investment cooperation in a selective manner, using quality, efficiency, and environmental protection technology as the key assessment criteria. Priority will be given to projects with advanced technologies, new technologies, future technologies, green projects, modern governance, high added value content, with spillover effects and ability to link with the global production and supply chains.

In the coming time, the Government will issue an action program and institutionalize important directions and policies set out by the Politburo in order to receive more quality investment capital flows, with more positive impacts on the economy. Along with the Government's efforts, we would like to emphasize the roles and responsibilities of FDI enterprises in the course of development of Vietnam, particularly their creation of linkages and cooperation with domestic businesses and support each other for mutual development.

Mr. Kyle F. Kelhofer, Senior Country Manager, Vietnam, Lao PDR, Cambodia

Without question FDI has evolved in these past three decades as a major driver of economic development with the arrival of investment multinational enterprises and expertise have brought enormous gains to the country in terms of growth, exports, jobs and shared prosperity for the citizens of Vietnam. Vietnam is targeting the upper middle income classes status by 2035 with innovation and new sources of growth. Key at the heart of this new era of innovation will be Vietnam's ability to adapt and thrive in the increasingly global industry 4.0 environment both in economic development but importantly innovations in sustainable development.

Vietnam is already among the top 20 polluted countries in the world in terms of air pollution, one of most energy intensive countries in East Asia, making even more important the need for innovations to implement a greener more sustainable economy. IFC's own experience globally has highlighted that sustainable business and shared prosperity is also profitable in long term business. As a partner for prosperity, IFC remains committed to supporting the Government and the business community at

large to unlocking the door for Vietnam to a next stage of sustainable development and economic prosperity for its citizens.

Ms. Virginia Foote, Co-Chair, Vietnam Business Forum Consortium

We will concentrate on three areas of importance for your consideration of their role in sustainability and growth:

First, FDI can work with the Government and private sector to help build more efficient systems so that government and businesses spend less time and less money on administrative procedures. The right kind of business and FDI is attracted to environments that adhere to international best practices as benchmarks for business integrity and open competition, digital economy advances, cyber security, vibrant cities, a global accounting standards, reduced corruption and burdensome administrative procedures, fair and predictable tax policy and implementation, and cash-reducing mechanism, e-commerce and e-government can be priority.

Second, addressing the increasingly poor air quality and the environmental degradation caused by poor waste management for which we all contribute to, not only is important for sustainability but can also be seen as a tremendous opportunity for growth of the “circular economy”. We hope a priority can be placed to maximize the use of renewable energy, which will create jobs and reduce pollution. Additionally, proper waste management and recycling could be an enormous growth area.

Third, the vision for future sustainable economic growth should prioritize building a robust system that welcomes, encourages and nurtures FDI focused on innovation and enhanced linkages with the private sector. We salute Minister Dung’s idea for an Innovation Center, encouraging both foreign and domestic private investment in innovation and research, and development at both academic institutions and within companies –requires tightly respecting intellectual property rights –and it can help pave the way for the next chapter in Vietnam’s success. Innovation plays to Vietnam’s unique strengths and advantages, and is a great opportunity we can help attract and see flourish.

SPEECHES BY 7 COMMERCIAL BUSINESS ASSOCIATIONS

Dr. Vu Tien Loc, President, Vietnam Chamber of Commerce and Industry

We see that the key areas for development reform in 2020 and beyond will still include institutional reforms, removing barriers, and connection of development efforts. Connection includes linkages with domestic small and medium enterprises, hyper-connection via revolution 4.0, linkage between the domestic economy with the foreign economies via FTAs.

Regarding FDI linkages, there are two issues which include FDI enterprises’ responsibilities towards their second home country and domestic SMEs’ capacity. FDIIs should consider their responsibilities to link with domestic SMEs, enhancing the linkages to pave the way for Vietnamese enterprises to participate in the global value chains. On the Vietnamese government side, we wish to promote SME support programs and expect the Minister of Planning and Investment to submit to the Government for promulgation of the Law on Supporting Industry to provide more robust measures to promote Vietnam’s supporting industry.

The key reforms in the coming years include:

- Removing duplication in business laws and regulations
- Continuing to cut down administrative procedures and specialized inspections
- Strongly promote e-Government
- Handing over public services to the society and the market
- Further decentralizing and assigning responsibilities to local governments.

Finally, we would like the Minister and the Government to pay more attention to the amended Law on Enterprises, the Law on Investment and the Law on PPP as we believe that these three Laws will become the basis for reforming investment in businesses in the future.

Ms. Amanda Rasmussen, Chairwomen, American Chamber of Commerce

Developing and enabling regulatory ecosystem with fair transparent predictable and streamlined policies that value innovation will help Vietnam to continue to attract, retain and grow high quality trade and investment. AmCham seeks fair and predictable tax policies aligned to global standards including OECD transfer, pricing guidelines and the ability to obtain advance rulings.

Technical barriers to trade have created uncertainty and negatively have impacted U.S. agricultural exports. We continue to urge Vietnam to eliminate these technical barriers to trade through science-based standards consistent with international norms.

Another area of concern is our members reduced ability to develop real estate in Vietnam. Delays in approvals have deterred investors from developing high quality projects that would bring innovation and generate economic growth opportunities to many parts of Vietnam.

The lack of digital standards, norms and certification, coupled with the risks of cyber threats, may stifle future investments. Requirements under current law for data localization and local offices impose unnecessary burdens to service providers without corresponding benefits. AmCham seeks implementing guidance to reduce confusion and ease uncertainty. Growth in the financial services and fintech sectors will depend on implementation of a legal, regulatory and policy framework that enables these sectors to continue contributing to Vietnam's financial inclusion and prosperity.

Energy security is essential to support and accelerate the process of sustainable industrialization and modernization. The made in Vietnam energy plan 2.0 highlights these opportunities including those for renewable energies and LNG.

Modernizing education and ensuring a skilled workforce of managers, engineers manufacturing and construction technicians is critical to growth. We recommend the Government to take further action to modernize and upgrade its national education system particularly at vocational and university levels.

Mr. Kim Han Yong, Chairman, Korean Business Association in Vietnam

In order to achieve the bilateral trade volume target of 100 billion dollars at the earliest date possible, the political support of Vietnam government is critical, especially to address the difficulties faced by the investors, either existing or potential.

In this regard, please allow me to make a few policy suggestions:

- It is worth considering the introduction of the foreign investment ombudsman system which is also highly regarded by investors in Korea. Korean government is ready to share with Vietnam its operational know-how and experience as part of policy cooperation between two countries.
- More predictability and consistency are in need for economic policy. I believe that allowing foreign companies to participate in SOC projects will serve better Vietnam's interest in the longer term.
- A full and active protection for foreign-invested enterprises that requests trade remedies such as anti-dumping duties and safeguards are needed.
- Tariff policy for FDI companies: Vietnam government currently refunds the VAT for imported goods that are subsequently exported to foreign countries or non-tariff zones without undergoing any additional processing, and the same principle should also be applied to the customs duties.

Mr. Nobufumi Miura, Chairman, Japan Business Association in Vietnam

Environmental Protection: The Government of Vietnam should set clear and standardized regulations such as "health priority over industry". Moreover, the Japanese companies are prepared to utilize their past experiences to provide Vietnam with technical assistance and know-how to improve the environment.

PPP (Public-Private-Partnership) Law: it is important to establish the risk-sharing between the Government of Vietnam and private sectors to ensure that there will be no unreasonable risk. The Government is recommended adopt the "Governing Law", "Government Guarantee", "State Capital Contribution" and "Termination Payment".

Construction of Global Value Chain: It is vital to foster and develop Vietnamese enterprises in the Global Value Chain. The Government is recommended to consider measures such as giving incentives to foreign companies when they achieve high local procurement rates and make the application process of, for example, subsidies for human resource development in Small and Medium enterprises stipulated in Decree 39/2018/ND-CP simpler.

Human Resource Development: As Vietnam is facing a shortage of engineers due to the entry of foreign companies and an increased number of companies in the manufacturing sector, trained engineers are needed in Vietnam. It is desirable to prepare appropriate working environment so that their experienced employees can impart the knowledge to other engineers.

Legal Stability and Investment Incentives: We would like to suggest to the Government of Vietnam to development a pre-inquiry system for companies to contact the Government including tax authorities, for regulation inquiries related to incentives in advance, issue an EPE-licensing from the beginning of company establishment and adopt a way to confirm compliance with Decree 82 by a post-audit to increase foreign direct investment and improve the investment environment.

Mr. Tim Evans, Member of Management, British Business Association in Vietnam

Healthcare and Pharma

- *Online medical learning*: We would like to have legislative regulation in place so that online learning can be accredited for the purposes of Continuous Medical Education (CME) or Continuous Professional Development (CPD).
- *Foreign Investment Enterprise (FIE)*: It is recommended that Vietnam provides a feasible transition period together with clear technical guidelines for the transition to FIE establishments and, for their feasible operation in the future, legalize FIE's right to build up and protect the brands by themselves or by supporting the fee for the distributors to do marketing activities.
- *Certificate of Pharmaceutical Product (CPP)*: It is recommended that Vietnam should harmonize the requirements for CPP contents submitted in Drug Registration dossiers in Vietnam with WHO CPP scheme through revising the relevant clauses in Circular 32 to remove additional information beyond WHO CPP format. In the interim, awaiting the revised Circular 32, we recommend the acceptance of Ministry of Health, Drug Administration for Drug Registration dossiers to be submitted with current CPP under WHO template, accompanied by applicant's Justification letter.

Education

- *Qualifications recognition*: We recommend MOET to consider nationwide recognition of internationally recognized qualifications and foreign language certificates in areas such as student admission, training and graduation, etc. The recognition should be based on a clear and transparent set of criteria.
- *International school establishment and operation*: We would like to request the authorities to lay down a clear process, with clear timescales and a clear line of appeal if they don't fulfil their obligations.

Financial and professional services

- *Information transparency and accounting standards*: BBGV recommends Vietnam to apply IFRS consistently and has been working closely with MOF to develop IFRS roadmap in the future.
- *Fintech*: BBGV recommends the Government to address the issues of fintech regulatory framework and the lack of clarity around the data localization and local entity requirements under Cybersecurity Law.
- *Phytosanitary certificate*: BBGV recommends removing the requirement for Phytosanitary certificates issued by Vietnamese authorities when importing plant products into Vietnam and when goods are accompanied by a Phytosanitary certificate issued by the UK or an EU country to ensure a level playing field.

Mr. Ywert Visser, Vice Chairman, European Chamber of Commerce in Vietnam

Ensuring sustainable agriculture and farming: This can be done through wider adoption of plant-based science products, transparent science-based regulatory system consistent with international best practices and the responsible effective use of agriculture innovation applications. Our members remain concerned of several regulations of labelling of nutritional food products as they may negatively impact domestic production and also exports.

Issues related to cosmetics products: This includes removal of pre-approval requirement of cosmetics advertisements, requirements for certificate of free sale, VAT for goods donated to non-government organizations and also intellectual property of imported branded products.

Ensuring implementation of EVFTA supporting enterprises and smooth implementation of its provisions. EuroCham recommends the Government to maintain the predictability and stability of the current SCT system.

Mobility sector: EuroCham recommends that foreign invested companies in automotive should be allowed to transshipment without restrictions. The issues of traffic congestion, pollution and traffic accidents in big cities should also be addressed.

Mr. Phillip Dowler, President, Australian Chamber of Commerce, Vietnam

AusCham encourages Vietnam to ensure all future CPTPP-related administrative procedures are implemented on schedule, to treat companies utilizing CPTPP Certificates of Origin and seeking retrospective application of CPTPP tariff rates consistently and in accordance with Vietnam's trade commitments.

Australian educational institutions can help to improve the standard of education in Vietnam in areas such as research, quality, vocational and technical education, and skills development. Therefore, the environment should be optimised encourage quality education institutions from across the globe to invest in Vietnam and/or collaborate with Vietnamese education institutions.

Finally, AusCham's members are facing difficulties in conducting tax clearances when seeking to close their businesses in Vietnam. It is important for systemic tax system confidence that companies are able to rely on previous tax filings and dealings rather than completely re-opening their entire tax history.

Feedback by Mr. Nguyen Nam Hai – General Director of Department of Technology Appraisal, Examination, and Assessment, Ministry of Science & Technology

- *Regarding product labeling:* Businesses are concerned about the new regulations on labeling “not containing” or “not adding” in Article 8 of Circular 05/2019/TT-BKHCN, VBF and Ministry Science and Technology have the same approach and viewpoint. VBF and the Ministry of Science and Technology take CODEX standards as international reference standards relating to food labeling. However, the interpretations of the specific regulations on CODEX standards are different between the agency drafting Circular 05 and VBF's member enterprises.

We would like to acknowledge this issue and will have further discussions with VBF so that we have a unified understanding of the published international standard and, on that basis, to study and amend Circular 05.

- *Regarding technology transfer registration:* From the time the Law on Technology Transfer took effect since 2017, there have been about 200 technology transfer contracts registered at central and local levels. 95% of them were registered within the time limit prescribed by the Law (within 5 working days from the date of providing complete documents).

Regarding the confidentiality of the technology transfer registration process, Article 34 of the Law on Technology Transfer provides for responsibilities of civil servants in processing information on technology transfer registration contracts regarding the businesses' information confidentiality.

Regarding the concept and definition of technology: we would like to acknowledge the businesses' recommendation and will consider it in the near future.

- *Regarding regulations on the management of the import of used machines, equipment and technological lines to Vietnam:* Instead of the former approach adopted in Circular 23 where technological lines are imported based their age, in Decision 18, we consider the actual quality of the machines which are interpreted in scientific terms as their capacity and performance.

Since the effective date of Decision 18, about 40 used technology lines have been imported to Vietnam, of which over 90% had been assessed by a foreign assessment organization. This shows that the approach of Decision 18 is consistent with international practice, thus making it easy for businesses.

In addition, the import of a used technology line must not go through any specialized regulatory body, but the process will be conducted via two parties, including the direct importers and the customs authority on the condition that all papers and documents required by Decision 18 are submitted.

- *Strengthening protection of intellectual property for businesses in general and Vietnamese enterprises in particular:* Ministry of Science and Technology submitted to the National Assembly the proposal for development of the revised Law on Intellectual Property and the draft Law is expected to be submitted to the National Assembly in 2020. We look forward to receive further coordination and contribution from VBF and businesses on this issue.

SESSION 1

Mr. Frederick Burke - Head of Investment and Trade Working Group

Some progress has been made on three important issues were raised by the Investment & Trade Working Group in the VBF, but for each, the underlying issues is still unresolved. These issues include the requirement for registration of "technology contracts", issues arising in respect to the approval requirements for imported used equipment and response from the Ministry of Construction to our questions on restrictions on foreign individual ownership of housing in Vietnam.

Recommendations to the draft Law on amendments to the Investment Law and Enterprise Law:

- Enterprises are asking for more protection of investment against regulatory changes and retroactive application of new laws or implementation of old laws
- Transitional period is provided for but it needs to cover the Investment Registration Certificates that were issued prior to 01 Jan 2021
- "Negative list" approach: MPI is suggested to strictly limit the "Negative List", with an eye to the services reserved by Vietnam in its different international treaties
- Clarification in respect to the ongoing confusion regarding the effective time for transfers of shares/contributed capital: the Draft Amendment to Enterprise Law is suggested to include additional clause to specify that the parties in a share transfer can decide the time to make payment, and that the effective time for a share/contributed transfer is when the amended ERC is issued to the buyer

- Eliminating the inconsistency regarding the method for the payment of shares/contributed capital transactions by eliminating Article 36.3 of the Enterprise Law
- The Draft Amendments to Enterprise Law should provide clearer language for limited liability companies with two or more members to understand that they can set a voting rate to be lower than 65% - 75% in the charter.

Fintech and digital commerce:

- Digital media: current regulations applied to local broadcast television may be untenable for nearly all foreign on-demand services, thus establishing a barrier to trade
- Draft decree amending Decree No. 101/2012/ND-CP on non-cash payments: Among the major concerns, the proposed 49% cap on foreign participation in non-cash payment service providers would discourage investors and investment
- The Cybersecurity Law creates a lot of questions and concerns on whether there will be impediments on cross-border data flows.

Use Innovation to Protect Vietnam's Environment: The Government should prioritize the highly promising innovation that rooftop solar energy and renewable energy offer.

New amended Labor Code:

- Overtime cap: we suggest that the implementing decrees clearly provide more special situations and confirm that enterprises will only need to notify, not to obtain approval from, the labor authority to have employees work for 300 overtime hours per year.
- Extensions of work permit that a foreign employee may apply for: the implementing decrees shall provide that the new work permit application process will be more streamlined for those foreign employees who have been working in Vietnam and previously been granted work permit.

Land Law: Our members find that the prohibition against mortgaging their land use rights to overseas lenders cuts them off from a large capital source and stifles innovation. This would be an appropriate topic for consideration in light of the pending amendments to the Land Law in 2020.

Feedback by Mr. Quach Ngoc Tuan - Deputy General Director of Legal Department, Ministry of Planning and Investment

It is expected that the amended Investment Law and Enterprise Law will be approved by the National Assembly at the 9th session in June 2020.

I would like to feedback on the specific recommendations as follows:

Draft Law amending Investment Law

- *Regarding the determination of investment conditions applicable to foreign investors, businesses are concerned about the solicitation of opinions related to the sectors and services that are not included in Vietnam's schedule of commitments to the WTO:* The Draft Law amending Law on Investment includes additional provisions on the list of business lines with conditional access to market applicable to foreign investors in accordance with the negative list approach. Depending on the socio-economic conditions from time to time, and laws, ordinances, international treaties on investment, the Government will publicly disclose the list of business lines with conditional access to market applicable to foreign investors. Other than this list, foreign investors are entitled

to the same market access conditions applicable to domestic investors. This list will help remove the consultation with line ministries when examining the conditions applicable to foreign investments and the conditions are guaranteed not to be expanded than the commitments and current provision.

- *Supplementing the provision on non-retroactivity related to investment conditions:* the drafting agency would like to acknowledge this VBF's request and would like to further discuss this issue to come up with a suitable option.

Draft Law amending Enterprise Law

- *To more clearly provide that limited liability companies with two or more members can provide for a voting rate lower than 65% and 75%:* According to Clause 3, Article 60 of the current Law, unless otherwise provided by the company charter and a lower rate is specified, it is completely in compliance with the law. Accordingly, it is not necessary to amend the current Enterprise Law in this regard.

Mr. Kenneth Atkinson - Head of Tourism Working Group

Some of the recommendations that the Tourism working group would like to highlight:

- Through ecotourism services, smart city development, forest re-plantation and national parks promotion we must diversify Vietnam's portfolio and reduce overcrowding in congested areas.
- Mandatory policies and investment from both central and local authorities are required for the development of new facilities, or through PPP, need to be developed to support existing properties and future developments, aligned with environmental responsibility measures and fully developed waste management programs.
- City urban planners and tourism management authorities need to understand the importance of heritage assets as significant economic and national resources and recognise their economic value and fragility and develop appropriate policies for their protection
- Developing the future tourism workforce and re-training of "old school" employees particularly with the promotion of the benefits and advantages of working in the Tourism sector might help address the lack of professionals in the industry.

Mr. Mark Gillin – Head of Tax and Customs Working Group

Removal of paper backups: While tax and customs authority currently accepts scanned or electronic documents, enterprises are still required by law to maintain paper backups for 10 years resulting in unnecessary storage retrieval and copying costs.

E-signature should be accepted for all documents not just in online processes.

Vietnam Trade Information Portal (VTIP) currently provides traders with a one stop source for information on compliance guidelines relevant to specific commodities. However, information is only relevant if it's current. So greater pressure must be placed on the Ministries to update the portal on a regular basis and the information function of the VTIP must be better integrated with the processing function of the single window platform.

VAT on goods delivered and received outside of Vietnam: the current tax treatment is in line with with the principles of VAT. We petition the General Department of Taxation and the Ministry of Finance to consider and give appropriate guidance for enterprises to implement. We propose that:

- Goods traded between two Vietnamese entity but delivered before clearance is subject to 0% VAT (pursuant to clause 1a and 2 Article 9, Circular 219/2013/TT-BTC).
- The Buyer pays import duty and VAT (if any) when carrying out import procedures. Customs value is the selling price in accordance with the contract between two Vietnamese entity (not the selling price of the Seller and the foreign party).

Feedback by Ms. Vu Thi Mai - Deputy Minister, Ministry of Finance

Administrative procedure reform: The Ministry of Finance is promoting digitalization in finance, further electronization of taxes and customs services. Regarding tax issues, the Ministry of Finance is actively promoting electronic invoices as provided for by Decree 119 as well as the Law on Tax Administration.

During this year and the following years, we will continue to restructure the customs' information technology system, particularly the restructuring of the national and ASEAN one-stop shop information technology, together with a specialized inspection project to promote modernization and facilitate the export of goods.

Korean Business Association has made recommendations on tax rates for export manufacturers. Regarding this issue, we have submitted to the Government a draft Decree amending and supplementing Decree 134/2016/ND-CP and it is expected to be promulgated in the first quarter of 2020. In this draft, there will be amendments and supplements on production and processing for export in accordance with recommendations by businesses and associations.

With regard to Australian Chamber of Commerce's proposal on retrospective application of CPTPP tariff rates according to the effectiveness of the Agreement: the Decree on tariff rates guiding CPTPP Agreement as well as Circular 62 guiding the origin of goods has ensured that the transitional provisions are implemented in accordance with the CPTPP's effective date and would be implemented since the effective date of the CPTPP Agreement all conditions of the Agreement are met.

Other issues should be further discussed during the study and development of the policy.

Mr. Nguyen Manh Hung, Representative of VBF Agribusiness Working Group

Agriculture, Food and Horticulture are key sectors in Vietnam and in South East Asia, accounting for a substantial share of the region's GDP and employing an important part of the workforce. With an increasing population, climate change, rising levels of urbanization and workforce challenges due to rural de-population, there is an urgent need for innovative solutions for the agriculture sector. In that context, Vietnam has a great opportunity to join the international agricultural supply chain for the high-end market. That is only possible when we can convince the global market place that we are capable of supplying high quality, clean and hygienic meat, fish and produce that meets the quality and traceability standards of high-end markets such as the EU, USA, Australia & other countries that require not only high quality, but also knowledge of how the product was grown, processed, packaged, prepared and transported, how animals were treated, and how water was used, and waste managed.

To this end, agricultural sector needs to address ongoing challenges, including salinity intrusion, flooding, soil degradation, climate change, disease management, overuse of pesticides and herbicides, water and waste management, and the tension between urbanization, commercial business needs, and farming land. The Government should facilitate private businesses' engagement in solving these challenges, such as using smart technologies, drones, sensors, Internet of Things, artificial intelligence and other advanced technologies. The Government also needs to play its role in improving the legal system and institutional capacity to enhance the comprehensive compliance with quality standards, gradually gaining international recognition for Vietnamese agricultural products.

Mr. John Rockhold, Head of Power and Energy Working Group

Made in Vietnam Energy Plan is a business case for primary use of Vietnamese domestic resources to stimulate investment in clean, secure, and affordable energy. VBF Power & Energy WG organized the workshop yesterday to introduce the report widely to the government side, including EVN, MPI, MOIT, CEC, etc. Sustainable energy is the practice of using energy in a way that meet the need of present without compromising the ability of the future generation to meet their all needs. Meeting Vietnam's energy sustainable goals is widely considered to be one of the greatest challenges facing the country over the next 15 years. Achieving these goals will require government policy that meet growing demand while encouraging the private sector's investment, safeguarding environment & increasing energy efficiency. MVEP 2.0 proposes the following recommendations that would improve the reliability and affordability for a sustainable Vietnam's energy system:

- Prioritize renewable energy in national power planning
- Increase use of natural gas as the current best-fit baseload for renewable energy
- Construct a regulatory and permitting environment that attracts private sector investment in clean energy generation and energy efficiency
- Construct a regulatory and permitting environment that promotes energy efficiency
- Construct a regulatory and permitting environment that attracts smaller scale off-grid investment in clean energy generation
- Invest in grid infrastructure to improve stability and capacity
- Halt any new approvals for coal

Response from the Representative of MOIT's Electricity and Renewable Energy Authority (EREA)

Principles set by the Government in developing the Power Development Plan VIII include:

- Ensuring power source supply-demand balance across regions, thereby balancing the demand for load development.
- Prioritizing renewable energy development, with solar power, wind power, offshore wind power and other energy sources such as biomass and waste-to-energy power.
- Using energy in an efficient manner, limiting loads using power sources inefficiently, with high energy consumption costs.
- Developing a modern, smart power grids connected with neighboring countries, such as China, Cambodia, and Laos.
- Developing a competitive wholesale electricity market and proceed to develop a competitive retail electricity market by 2021.
- Power development must adapt to climate change and global warming, towards green development in line with the national development strategy on green development.

Recently, the Government has introduced policies to encourage the renewable energy development, especially wind and solar energy. Regarding wind power, the Government has issued Decision 37 on wind power price mechanism & incentives. Regarding solar power, thanks to the mechanism under Decision 11, 7,000 MW has been developed, 4500 MW of solar power & 400 MW of wind power have been generated. Currently, many solar & wind power projects are being considered to be included in the master plan for investment in the coming time, especially the mechanism entitlement deadline before November 30, 2021 with wind power projects.

However, there are some problems in solar power development, such as the lack of sources to support and balance the shortage of solar power; relatively concentrated solar power development leads to insufficient transmission grid connection. The Ministry of Industry and Trade has submitted to the Government and advised the Government on solutions to release capacity of existing power generation projects.

For future policy making, we are working with experienced international consultants, especially those from the World Bank and Asian Development Bank to develop bidding mechanism for future solar power projects. The objective is to ensure transparent and non-biased investor selection, reduce capex in solar power development and wind power in the future.

Regarding the recommendations of the Working Group, the Ministry acknowledged and would take into account in the drafts submitted to the ministry leaders and Government leaders for promulgation in the coming time.

Mr. Dominic Scriven, Head of VBF Capital Markets Working Group

By the end of 2019, Vietnam's economy is truly a bright spot in the global economy. Thanks to dedicated efforts of the State Securities Commission, the Ministry of Finance and the National Assembly, Vietnam has passed the new Law on Securities. VN-Index rose by about 9%. Interest rate on government bonds is cut down to a record low of 3% (for 5-year maturity).

However, VN-Index growth of 9% still lags behind frontier markets with +14%; emerging markets with +15%, and developed markets with +25%. GDP increase by +25% to VND 300 billion upon revaluation makes the capitalization rate decrease from 76% to over 60%, lower than the planned target. As anticipated by the Capital Market WG a year ago, Vietnam has not been successfully upgraded to Emerging Market status. Also, in the 4th quarter, the credit rating agency announced a negative review of Vietnam's credit rating.

Today's topic is around rapid and sustainable development. Regarding the RAPID element,

- it is proposed that the Ministry of Finance and the State Securities Commission discuss openly and thoroughly with market members in drafting Decrees and Circulars guiding the Law on Securities.
- It is proposed that the State Bank of Vietnam, after this Conference, facilitate meeting with market members to discuss and tackle barriers in developing institutional investors.
- It is proposed that the Ministry of Planning and Investment revise the Law on Investment and Law on Enterprises this year, creating all favorable conditions for Vietnam to quickly apply Non-Voting Depository Receipt (NVDR).
- In order to integrate the securities sector into the Industry 4.0 era, it is proposed that the Government endorse the application of digital signatures, electronic records, e-wallets, instant payment transactions, real-time stock and fund pricing.

Finally, please note SUSTAINABLE element across the four aspects of the issue:

- Pay attention to governance, especially support Vietnam Institute of Directors established in 2019.
- Please take into account the climate change crisis, its causes, roles and responsibilities, and opportunities.
- Pay attention to protecting the ecological environment, accelerate recent efforts in increasing the sanction of illegal wildlife trade.
- Pay attention to air pollution, but first of all, Vietnam should study the CO2 measurement regime, because what cannot be measured cannot be managed.

Ms. Jodi West, Head of Banking Working Group

The BWG has been asked to speak about “*Attracting investment for a sustainable financial sector that supports innovation in the 4th Industrial Revolution*”.

In BWG opinion, there are 2 angles to this topic:

1. The innovation required to ensure the financial sector itself remains sustainable, and
2. The innovation required in the financial sector if Vietnam is to continue attracting investment to realize its potential in the 4th Industrial Revolution.

Regarding the first angle, the 4th industrial revolution has delivered technological advancements which are transforming entire industries as well as the global economy. The success of individual businesses and industries alike is dependent on the successful adoption of new technology. However, for a regulated industry such as banking, the speed of technological change is determined by the pace of regulatory change. Given how quickly technological change is unfolding, this is a challenge for regulators over the world.

The National Assembly and the Government have provided clear direction for Vietnam over the years ahead, and in particular, the BWG supports the Government’s continuous efforts in the following areas:

1. Broad-based digitization,
2. Promotion of e-payments to realise a cashless society,
3. Enhanced information and cyber security, and finally
4. Fortification of the financial system.

The appropriate legal frameworks will need to be established to support these areas of technological change. Effective regulation will require collaboration and coordination across numerous ministries and agencies such as the Ministry of Finance, Ministry of Information and Communication, the Ministry of Justice and the SBV.

Whilst progress has been made in recent months, we encourage the Government to accelerate the pace of regulatory reform to bring Vietnam into line with our regional neighbours, and ensure the ongoing sustainability of our banking industry.

The SBV is currently reviewing the Decree on non-cash payments (*No. 101/2012*), and assessing the potential application of new bank technologies such as Open API and centralized payment infrastructure. We are supportive of such technologies and believe the move towards non-cash payments will improve financial inclusion here in Vietnam and contribute to GDP growth.

Regarding the second angle, Interest from Environmental, Social and Governance investors continue to grow, in line with global concerns about the environment. We encourage the SBV and Government to continue to support green funding alternatives and the regulation necessary to attract and support ESG investors.

Mr. Tony Foster, Head of the Infrastructure Working Group

First, the PPP law should maintain position in several code in the investment law already and allow the parties in specific instance to negotiate whether Vietnamese law or foreign law should apply to the contract. Apparently, a project should be built to comply with the law of Vietnam but the law of contract does not have to be Vietnamese law as in current draft. Vietnamese laws are all good but some set of laws are not clear for foreign bankers, thus, they either not fund the large projects or the cost of the funding may go up. Our suggestion, therefore, is to maintain the flexibility.

Second, an adequate change in law protection regime is important to address commercial and market elements and assure cost effectiveness and predictability of products or services of PPP projects. This is currently not in the draft PPP Law but an enabling provision could assist in ensuring that the point can be negotiated in the project contract.

Third, the draft should allow security to be granted over the project land, even if the land is free of rent. The Government did not intend to preclude security over land when it agreed that a project was free of rent. An exemption of land rental is a form of investment incentive in favor of the project company, which does not reduce the value of land use rights of the project company. This should be recognized in the new PPP Law.

Fourth, the new PPP law should contain the flexibility subject to the relevant safeguard for the government to issue guarantee wherever it is necessary. Again, that is in the investment law already and shouldn't be reduced when it comes to the PPP law.

Fifth, the draft contains the possibility of revenue protection for projects that don't work as expected, which is important for road projects, railway projects. It does not apply to projects approved by National Assembly/ Prime Minister. So, the flexibility is limited. Why not make it as flexible as possible in the draft law?

Our issues are detailed in the position paper and we look forward to discussing them further with the MPI as when appropriate.

Response from Mr. Nguyen Dang Truong, Director of Public Procurement Agency, Ministry of Planning and Investment

The Draft Law on PPP was discussed and reviewed by the National Assembly at their last session. The National Assembly plans to pass the Law at the 9th meeting held in May-June 2020. Comments from the Infrastructure Working Group are highly valid. However, implementing them will be a challenge. In the near future, the Ministry of Planning and Investment will coordinate with the National Assembly's Committee on Economic Affairs and other agencies in further refining the Draft Law in consultation with investors and business associations to submit the Draft to the National Assembly as per the proposed plan.

Mr. Colin Blackwell, Head of VBF Human Resources Working Group

Companies in Vietnam & over the world have desperate shortage of people with relevant skills. Vietnam has relatively young population so it is in excellent position to teach children new skills by adopting modern teaching method already used by more advanced economies. Education itself has to change its business model to remain relevant. The auto memorized & certificate-based education is obsolete but at the same time education is more important than ever. It will exploit the potential of technology, open source content of this globally connected world. This will create blueprint for the future of learning from school learning to learning in workplace.

Higher education & institution should focus on learner supported by technology with personal guidance & industry relevant content to meet their learners & individual learning needs. Focus on building student experiences through flexible program structures. Higher education & institution should be encouraged to employ more lecturers with real world practical experiences. Investment on education training sector should receive more encouragement & support. We suggest online learning as the available way of learning. We recommend to amend the Degree 86 to make them consistent with the regulation & the Age of 4.0 in Vietnam.

GUIDING REMARKS OF THE DEPUTY PRIME MINISTER TRINH DINH DUNG

Vietnam is transforming the growth model from breadth to harmonizing both breadth and depth by efficiently exploiting and using natural resources, making use of scientific and technological achievements to improve labor productivity, improving the competitiveness of goods and services, enhancing the efficiency of the economy in general and investment efficiency in particular. However, rapid development must be associated with sustainable development. Develop and implement a green growth strategy, ensuring the development of a low-carbon economy for energy efficiency. Develop clean and renewable energy to ensure national energy security. Businesses play a central role in that process because the State sets goals, but businesses will actualize those. Therefore, the Government of Vietnam remains committed to accompanying the business community. 2019 can be considered a breakthrough year for Vietnam's socio-economic performance. GDP reached 7.02%, exceeding the set target of 6.8%. Inflation was curbed at 2.79%, the lowest level in recent years. Import and export turnover reached USD 517 billion, the record high to date; trade surplus reached USD 10 billion. This is the fourth consecutive year Vietnam enjoys a trade surplus. FDI capital reached over USD 20 billion, the highest ever & the number of newly established enterprises reached a new record of 138,000, international tourists reached 18 million arrivals.

According to the assessment, foreign investment has contributed about 20% of GDP, serving as an important additional source for Vietnam's capital investment, representing 23.7% of the total capital investment. In economic terms, investment is one of the most important drivers of Vietnam's economic growth. The share of state budget revenues from the foreign investment sector also increased significantly, from USD 1.8 billion in 1994-2000, to USD 23.7 billion in 2011-2015, accounting for nearly 14% of the total state budget revenues. In 2018, it contributed nearly VND 298 trillion, accounting for 20.9% of the total state budget revenues. FDI enterprises have created jobs for about 4.51 million direct workers & 56 million indirect workers.

In recent years, along with a stable and continuously improving business environment, Vietnamese businesses have made great progress in terms of business quantity and quality. More effective cooperation has also been developed between domestic and FDI enterprises. Over 100 large multinational corporations have been operating in Vietnam, contributing to the positive spillover

effect of productivity, technology, development of supporting industries, and linkages with global production networks and value chains. High-tech manufacturing stages have been carried out in Vietnam, thereby raising the supply rate of finished products and semi-finished products by domestic firms to foreign-invested enterprises. In a number of industries, sectors such as motorcycles, electronics, home appliances, commerce, industry, high-tech, electronics and informatics, telecommunications, automotive & other accessories.

In the context of the 4th industrial revolution, international integration has become more intensive, which should be perceived as a new trend that will impact new practices, ideas and businesses among the Vietnamese business community in the future. Technology evolution trends & globalization are new drivers of business development in the era of Industry 4.0, automation, artificial intelligence will underpin management changes. Government aims to create a favorable business environment, spark innovation and competitiveness.

At the Forum today, we have been listening to many responsible and enthusiastic inputs from associations, businesses, international organizations and relevant ministries. These all relate to heated issues which require further coordination to resolve. The Ministry of Planning and Investment will work with the ministries and agencies of Vietnam to incorporate and refine legal framework, mechanisms and policies, improve administrative procedures, facilitate trade and investment, create enabling investment environment and regulatory environment to mobilize resources for capital investment while creating opportunities to tackle challenges faced by businesses & citizens in the development and investment process.

Mr. Ousmane Dione, Country Director - World Bank Group

There are 3 cues which can contribute for Vietnam to be successful by 2035.

First, quality of institution will be key to Vietnam for the decade to come. In order to do so, Vietnam must prioritize & accelerate institution in a fast & sophisticating business environment. The FDI role will be critical on this but making sure the institution can cope with the need of the FDI & private sector will be more critical. This is where the quality of institution will be especially critical.

Second cue will be the quality of infrastructure. This will require investment. The role of the private sector is going to be critical. Public & private partnership will be critical to effectively attract quality of the infrastructure, especially in energy & transport among others. This will be key to sustain Vietnam growth engine.

Third cue will be the quality of human capital. Higher education & technical and vocational training will be critical & will need to be reformed, improved and accelerated to further build Vietnam's labor force for the 21st century.

The FDI and domestic private sector are going to play an important & critical role. They should be engaged to continue to provide quality jobs creation. The private sector should be a driving force for innovation & technology for adaptation, digital economy, and artificial intelligence. The government should act as an enabler, enabling to make it happen, enabling to simplify it, but most importantly, enabling it to be fostered & to be sustainable.

Dr. Vu Tien Loc, President - Vietnam Chamber of Commerce and Industry

In the context of the world economy in 2020 where no signs of recovery and prosperity are anticipated, Vietnam will certainly be significantly affected by this outlook. Within the country, there are also

some ominous signs: growth in some key sectors has slowed down, legal bottlenecks on business remain pending, and business barriers remain high. We recommend that the Government's reform efforts should focus on bottlenecks, starting with legal conflicts in business, and ensure consistent enforcement. What the business community is worried about is recent delays in administrative processes & procedures for implementing projects, which will affect investment and growth performance in the coming years. This problem should be tackled sooner rather than later.

Therefore, we suggest that in the next year, one of the important action programs of the Government is to focus on solving 25 overlapping regulations relating to business investment as proposed by the business community. We are delighted that the Government has set up a working group on dealing with legal conflicts in business and set up a working group to promote institutional reforms. With an interdisciplinary perspective, the participation of experts and business community, we will have a better approach to promote reforms in the future & especially in ensuring the consistency of legal system & enhanced enforcement.

It is recommended to start implementing Program 25 by focusing on dealing with overlapping regulations proposed by the business community. Second, Program 20 should also be implemented by cutting 20% of administrative procedures & expenses related to administrative procedures in business. Third, deliver Program 50 by implementing the Politburo resolution on enhancing the quality of foreign investment.

Mr. Nguyen Chi Dung, Minister - Ministry of Planning and Investment

Firstly, on improving the investment and business development environment, although the Government's efforts in creating a stable and solid business environment in support of entrepreneurship & startups are highly appreciated, the business community still believes that the Government should continue to make more practical and synchronous efforts to achieve strategic goals. The reform measures must be further strengthened and maintained in the coming time.

Second, on the improvement of business and investment institutions, the business community also proposed many issues related to the law on technology transfer, law on construction, law on investment, law on enterprises, law on planning, law on bidding, law on labor, law on land, law on network security, law on PPP, etc. These are all important issues closely related to business operations.

Regarding taxes & customs, there are still some shortcomings in the application of local policies and regulations, not really creating favorable and level playing field for domestic and foreign investors. The scope of post-clearance audits remains overlapping.

The issue of value-added tax on goods delivered outside Vietnam, trade activities of foreign-invested enterprises & conditions to be recognized as export processing enterprises are also unclear.

Regarding power & energy, recommendations aims to prioritize renewable energy in the national power development plan, increase the use of natural gas, and basic loads, most suitable for renewable energy, create a favorable legal framework to attract private investment & clean energy production & energy efficiency, develop a favorable legal environment to attract investment & smaller-scale off-grid clean energy production. In terms of infrastructure, Vietnam needs to further develop an effective PPP investment mechanism.

Regarding agriculture, the working group also recommended to deploy smart agriculture in partnership with countries to implement climate-smart agriculture. This is also the opportunity for Vietnam to join the supply chain of agricultural products in the world.

In terms of education and training, Vietnam needs to fundamentally and comprehensively reform higher education to bring education in line with the Industry 4.0. National human resource development focuses on lifelong learning & soft skills, technology skills, communication skills, and code of conduct for all students.

In terms of tourism, it is necessary to further diversify the list of destinations in Vietnam and expand markets with major tourism development in the world, in addition to current markets such as South Korea or China.

During the discussion, representatives of ministries and agencies also gave specific feedback and exchange details, thereby clarifying the contents of mutual interest. The Ministry of Planning & Investment will synthesize all comments from the business community and instructions of Deputy Prime Minister Trinh Dinh Dung, and closely coordinate with the local ministries to study the recommendations from the working groups and business communities to propose competent authorities in further reforming administrative procedures, improving the business investment environment for businesses in general and FDI enterprises in particular, contributing to Vietnam's future rapid and sustainable development.

In partnership with:



Annual Vietnam Business Forum 2020 Sponsors:

Diamond Sponsors



Platinum Sponsor



Gold Sponsors



Silver Sponsor



In-kind Sponsor



Vietnam Business Forum Consortium:



For more information, please contact:

Vietnam Business Forum Secretariat

3B Floor, Horizon Tower, 40 Cat Linh, Hanoi, Vietnam

Tel: 84-24 3715 2223

Fax: 84-24 3715 2218

Email: info@vbf.org.vn

Website: www.vbf.org.vn

Foreign Investment Agency

Ministry of Planning and Investment

6B Hoang Dieu Str., Ba Dinh Dist., Hanoi, Vietnam

Tel: 84-804 8416

Fax: 84-24 3734 3769