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25th ANNIVERSARY

VBF VIETNAM BUSINESS FORUM

ANNUAL VIETNAM BUSINESS FORUM

Business community in partnership with the Government of Vietnam in fostering green growth

TECHNICAL SESSION

Hanoi, March 17, 2023

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This publication was created for the Annual Vietnam Business Forum, Technical Session on March 17th, 2023 in Hanoi.

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ANNUAL VIETNAM BUSINESS FORUM

Date & time: 08:00 - 11:30, Friday, 17 March 2023
Venue: Crystal Grand Ballroom, Lotte Hanoi Hotel, 54 Lieu Giai, Ba Dinh, Hanoi

BUSINESS COMMUNITY IN PARTNERSHIP WITH THE GOVERNMENT OF VIETNAM IN FOSTERING GREEN GROWTH

TENTATIVE AGENDA

TECHNICAL SESSION	
8:00 – 8:30	**Registration**
8:30 – 8:40	**Opening Remarks** • Ministry of Planning and Investment – *Ministry leader* • Vietnam Business Forum Consortium – *Mr. Søren Roed Pedersen VBF Co-Chair*
GREEN ECONOMY, SUSTANABLE DEVELOPMENT AND BUILDING COMPETITIVENESS IN NEW CIRCUMSTANCES	
8:40 – 10:00	• **Ready for Energy Transition period & Circular Economy** - *Power & Energy Working Group* - *Environment Working Group* - *Agribusiness Working Group* • **Sustainable development** - *Investment & Trade Working Group* - *Digital Economy Working Group* - *Infrastructure Working Group* ***Responses from relevant Ministries***
10:00 – 10:15	**Tea Break**
10:15 – 11:20	• **Competitiveness in new circumstances** - *Tax & Customs Working Group*

	- *Education & Training Working Group* - *Human Resources Working Group* - *Tourism Working Group* - *Mining Working Group* ***Responses from relevant Ministries***
CLOSING REMARKS	
11:20 – 11:30	• Vietnam Business Forum Consortium – *Mr. Nguyen Quang Vinh, VCCI Vice President* • Ministry of Planning and Investment – *Ministry leader*

POSITION PAPER OF POWER & ENERGY WORKING GROUP

READINESS FOR THE ENERGY TRANSITION PERIOD

On behalf of the VBF Power and Energy Working Group (PEWG), we would like to congratulate Vietnam on the good outcomes in the electricity in 2022, which is to put into operation power grid projects to accommodate renewable energy sources, and ensure safe, reliable and adequate supply for residential and commercial purposes despite the increasing production demand when the economy starts recovering. We also would like to express our appreciation for the Government's willingness to take into account comments and discussions with the PEWG and other private sector power and energy organizations in the development of the Power Development Plan 2021 – 2030, with a vision towards 2050.

In 2022, Vietnam's GDP expanded by 8.02%[1] from the growth of just 2.58% in 2021, which is the fastest pace annually since 1997. This is indeed an impressive result amid the uncertainties and instabilities of the global situation. However, such highlights the urgent need to accelerate the global energy transition. The recent events have also highlighted the cost to the global economy of a centralized energy system heavily dependent on fossil fuels.

Vietnam is no exception to this trend. The energy transition here is tied to the rapid growth of the economy, urbanization, and industrialisation. We have seen the strong aspiration of the Government leadership to speed up energy transition while meeting the requirements of economic development and the goal of becoming a high-income country by 2045. Energy transition is more seen as a potential engine for employment and this trend will likely grow, helping to build support for renewables.

- Fossil energy sources are gradually being replaced by green and clean energy sources, reducing greenhouse gas emissions and combating climate change.
- Vietnam is one of the first countries to renew its nationally determined contribution to the United Nations Framework Convention on Climate Change in 2020, committing to reducing greenhouse gas emissions.
- Vietnam needs energy security leading to zero carbon by 2050, that is affordable to the population as a whole and sustainable for its social economic development.

In 2021, Vietnam ranked 65th out of 115 countries in terms of readiness for energy transition in the World Economic Forum's Energy Transition Index with a score of 54, which is at the global average. This highlights the opportunities to be taken for energy transition in Vietnam. The roadmap for the country's transition process towards green and sustainable development will not only need to ensure energy security, but also socioeconomic development goals of the master plans across industries and sectors. However, this process requires support from developed countries, through financial and technical support.

In 2023, Vietnam has set four goals for the energy transition as below and the Power and Energy WG is willing to work with the Government to support this process:

- No new coal-fired power plants after 2030;
- An increase in renewable energy sources;
- Early access to technologies using new primary energy sources such as green hydrogen and green ammonia;
- An improvement of the transmission and distribution infrastructure of the national electricity system.

[1] Vietnam General Statistics Office (GSO)

Building on the COP26 commitments, the signing of the Just Energy Transition Partnership (JETP) between International Partners Group and Vietnam in December 2022 will support the country's ambitious climate targets and a substantial increase of renewable energies by 2030. This further reiterated that the Governments, multilaterals, the private sector, banks in short, all major institutions with a stake in energy have agreed that its negative environmental impacts far outweigh short-term economic gains, and there are sufficient, more sustainable alternatives to pursue. We have noticed these JETP targets reflected in the recent draft of the Power Development Plan VIII in December 2022 which estimates an investment cost of US$142 billion (US$126 billion for power generation/sources and US$16 billion for power transmission grid) for the period 2021-2030, the vast majority of which must come from the private sector. With the revision of the Electricity Law, this will create a framework for attracting more private investment into supporting the transition.

While such policies are much welcomed by the private sectors, more could be done to attract the funding necessary to move away from coal. Vietnam will need bankable and economically feasible energy projects. However, to maintain grid strength and growth, Vietnam must also secure a baseload sufficient to replace coal. This means the transition toward renewables, hydrogen, wind and solar with storage will have to get there by way of a flexible gas/LNG and eventually much being replaced by hydrogen as a baseload, scaled behind-the-meter renewables solutions, and substantive energy efficiency programs. In addition, we would like to see further progress of the discussion by the Vietnamese authorities to consider a bankable legal framework for high quality energy projects to get funding from the international financing market.

Evidence has shown how policies could encourage investment in renewables with the subsidized Feed-In-Tariffs for solar and wind energy. However, several GWs of these projects that fail to meet the Commercial Operation Date deadlines are awaiting a pricing mechanism that makes sense for both investors and buyers within the current legal framework. The MOIT has recently issued the maximum tariffs for these transitional projects but it still takes time for EVN and investors to agree a specific tariff for each power plant. Due to the global pandemic and its consequences, the industry has been facing delays and prolongation of construction work in wind and solar power plants, and rooftop solar systems. Therefore, delays in commissioning and commercial operations are sometimes beyond the control of the investors. Once again, we would like to highlight that these projects are clean energy generation assets of which some are ready to operate. In the current context, a timely solution is needed more than ever to address this issue while awaiting new tariff policies for renewable energy projects.

The Power and Energy WG would like to highlight that a financially strong EVN to enable a bankable power purchase agreement (PPA) is a prerequisite for sustainable power development, EVN cannot continue to pay substantial subsidies and take losses in the sale of electricity. Moreover, it will require the revision of current legislations to address the financing difficulties reported by EVN. There is still green financing which offers favorable rates to private investors to reduce CO_2, however, improvement of the legal framework on green financing activities is key to give more clarity on criteria for granting green finance.

The off-grid power projects, especially rooftop solar systems in the form of onsite corporate PPA and self-investment by the private sector continues to grow. The off-grid models have shown that producers and users are able to develop sustainable long-term agreements, and these should be reviewed to allow EVN workout pricing for using the national grid.

In the context of the JETP which provides important finance to operationalize Vietnam’s net-zero targets, the early approval of the pilot program for the offsite corporate direct PPA (DPPA) would be much welcomed by the PEWG members. In our view, such a pilot program is an important

mechanism to attract investors and private investments, not only in the energy sector but also in other sectors where companies are looking for clarity in the ability to source affordable green energy when making investment decisions. The clock is ticking for a lot of critical commitments in the space of renewable energy that our members have made. We hope to have the Government's support to have the right momentum for the offsite corporate DPPA pilot program finally to be launched and implemented in the first quarter of the new year 2023.

The Power and Energy WG recognizes that offshore wind has a high potential in Vietnam and in the future contributing as a baseload for the national grid. We are glad to become a member of the Offshore Wind Taskforce which serves as a platform for sharing best practices to support the first 4 GW. Recently, many foreign investors are interested in developing large offshore wind farms in Vietnam. However, to develop a large offshore infrastructure project such as offshore wind farms, Vietnam must address the current legal uncertainties. We hope the outcomes of the Taskforce will provide more background information, especially on the use of sea areas under the Law on Sea 2012 and Decree 11/2021. This issue should be addressed in the new draft Decree amending Decree 11/2021. Because without any property right over the allocated sea area, the project developer may not be able to mortgage the sea area (as part of the security package) to the project lenders. We also look forward to the guidance of the Government so that survey and development activities for offshore wind projects can commence soon, and prepare projects for early construction and power production. If the framework for offshore wind is set properly, Vietnam can attract billions of dollars of investments into projects and supply chain, create thousands of jobs and establish a strong driver for economic growth in the years to come.

Batteries will play a more important role in the country's power sector. To enable further integration of solar, wind, and distributed energy, and enhance grid stability, clean sustainable energy storage batteries can be a "key factor". We believe that battery energy storage can solve the challenges with renewable integration in Vietnam, assuring grid stability and playing a pivotal role in achieving Vietnam's net-zero carbon emissions target by 2050. Therefore, it is hoped that the Government will soon develop a legal framework, market mechanisms, and related guidelines for the development of clean sustainable energy storage batteries in Vietnam. There is also potential for indigenous iron/saltwater batteries, and competitive-cost environmental-safe rare earths for batteries and energy production which we think Vietnam would benefit from in the long run.

Hydrogen is another important part of the long-term solution. While too expensive for power plant use today, it is cost-effective for industrial and agricultural use, development, research, and international investments should make prices affordable in the distant future. Vietnam should therefore ensure that LNG-to-power and offshore wind projects are built with hydrogen in mind.
From the economic perspective of developing the Vietnamese private sector, we urge the Government to ensure that new power projects are helping to drive up Vietnamese private sector capacity. Such massive international investments have huge potential for not only driving the tax base and providing the energy necessary for economic growth, but also training entire Vietnamese generations of future Vietnamese companies with the needed technical and managerial leaders. Therefore, all new power projects should engage Vietnamese companies wherever possible from planning to building and on to operation and assisting in on-the-job and institutional capacity building.

Some of these concerns we have raised above are much aligned with the recommendations from the Environment Working Group. Vietnam has never been better positioned to involve the private sector in financing and supporting the transition to a decarbonized future. We fully agree that it is key to focus policies on increasing access to climate finance across all sectors of the economy, and

incentives to adopt energy efficient technologies, among other, to attract the necessary funding to decarbonize the economy.

In 2023, the Power and Energy WG will develop the Made in Vietnam Energy Plan 3 which will concentrate on the private sector support for the implementation of Power Development Plan VIII, especially in securing the private sector financing, local and international planning, investment, and operations, capacity building and recommendations on technical standard norms for a sustainable power development plan. These showcase the private sector's efforts in engaging with the Government in the energy transition process and supporting Vietnam in the implementation of the JETP and achieving its net-zero targets.

Thank you.

PEWG Survey – *Preliminary Outcome*

Opportunities & Challenges for the development of power sector in Vietnam

- Respondents
  - Experts from private sector, from SMEs to large corporations
  - Mainly working on solar, wind, battery & storage, hydrogen with at least 3 years of experiences in Vietnam

- Highlights

  77% think that Vietnam will need fossil fuels **for more than 10 years** (from now) for energy transition to meet the zero-carbon targets by 2050.

  For new power generation projects, **80%** believe that most of the funding will come from **international private investors.**

  Local banks and investors are most ready to fund **solar, onshore wind,** and **hydropower.**

The most significant barriers for the development of renewable energy in Vietnam are divided into 4 groups (voted by at least 50% respondents):

Policies & Legal framework

- Lack of predictability & sustainability in policies
- Lack of transparent & consistent policy implementation
- Lack of local Government's capacity for policy implementation
- Lack of policy and regulation enablers

Technology & Standards

- Limited development of supply chain and infrastructure to support RE
- Lack of a framework for promoting energy efficiency initiatives
- Lack of a framework for environmental and social impact assessment standards
- Lack of competitive low-emission technologies to achieve both scale and cost objectives

Bankability

- Inability to meet due diligence requirements by international financial institutions
- Power purchase agreements:
  - ❑ exposure to grid curtailment
  - ❑ high risks related to project approval and permitting

Human resources

- Inadequate supply of:
  - ❑ skilled renewable energy technicians and trades
  - ❑ qualified engineering designers and planners
- Limited availability of vocational training programs & tertiary education with a RE focus

POSITION PAPER OF ENVIRONMENT WORKING GROUP

ATTRACTING INVESTMENT TO GREEN CIRCULAR ECONOMY

Vietnam Business Forum's Environment Working Group welcomes the opportunity to provide input into the policy dialog regarding Vietnam's economic development and transition to a green, low carbon, circular economy. Over the past several years, the private sector has increasingly embraced principles of Green Growth and the Circular Economy in their development strategies and planning. They have been led to do so due to three primary factors: the recognized need to address climate change, the requirement of consumers of their products and services, and government regulations. Our members welcome government efforts to integrate these principles into regulations though we have many questions regarding their actual implementation and expected outcomes.

Extended producer responsibility is a case in point.

Chapter VI of the EPL outlines an extended producer responsibility system designed to improve waste management and recycling. The system, as described in Chapter VI, is heavily focused on monitoring the physical residues of consumption, bottles and cans, for example, rather than the material those bottles and cans are made of. In this way, the EPR system serves as a waste management system with a recycling component rather than a recycling system with a waste management component. This difference in approach is important as the approach taken will likely create unnecessary burdens on manufacturers and may not result in the expected outcomes.

First, manufacturers do not have the authority to compel consumers to deliver discarded products and packaging to collection points. Consumers discard those products and packaging or sell them to non-licensed collectors, who may also pick them out of the waste stream. This is a very dispersed system with a few central hubs in specialized recycling villages. In conversation, it appears that MONRE anticipates the creation of technologically sophisticated collectors and recyclers to replace the current "in fact" recycling system. These new entrants are expected to meet all standards for environmental production, health, and safety. The EWG would like to point out that recycling is a low margin business that relies on volume for profits. You can see this everyday in the overloaded trucks carrying used carton to recyclers in Bac Ninh. New entrants would also have to operate within these same economic constraints. In addition, each would have high administrative costs due to the need for monitoring, reporting and verification. For example, under the EPR guidelines, producers of bottled beverages would need to contract authorized agents to collect empty PET bottles and aluminum cans; require those agents to record the producer, number and type of the collected bottles, and report results to the producers on a regular basis. The agent would then be required to recycle those bottles and cans or sell them to an authorized recycler. They do not seem to be required to confirm if those materials were actually recycled, however. Chapter VI of the Law on Environmental Protection seems to suggest this process as one option for bottlers. If they choose not to work through agents, then the bottler would have to do this themselves. This is a complicated process that adds excessive cost to the recycled materials, which then leads to the question, where would these overpriced materials be sold. Would it not be easier to require the manufacturers of PET bottles and aluminum cans to meet a required recycling rate for these materials by purchasing them directly from "in fact" recyclers and reporting the rate of recycled *content* to MONRE? This would reduce an enormous amount of unnecessary monitoring while still achieving the desired outcome and preserving the market for these materials.

Motor vehicles present a similar case. Many of the parts and materials recovered from discarded automobiles and motorbikes have value. This is noted in Appendix XXII of the LEP. For this

reason, discarded cars and motorbikes are already regularly dismantled, and recycled for parts and materials. These enter the market as used parts. Only the production of authorized reconditioned parts requires the active participation of manufacturers. This is normally done by dealerships who repair vehicles and return used parts to authorized agents for reconditioning. There is no need for manufacturers to collect used vehicles. We understand that some of our members are already discussing this with MONRE. The EWG supports that continued dialogue.

Our members in the petrochemical industry have also pointed out the particular problems they will face with compliance. Chemicals are generally sold and distributed in plastic barrels and other plastic containers. While these containers can be collected by agents, recycling is practically impossible as there are no means of verifying that all chemical residues have been removed from recycled materials in Vietnam. Verifying the removal of chemical residues will require exporting to countries where testing facilities are available, raising the cost of any recycled materials produced from these used barrels and containers, even if they are sold in the country where they were treated. Reusing these containers for similar purposes or recycling them back into the production of barrels and containers for chemical distribution, avoiding the need for testing, could resolve this problem. Given the issues noted above, many of our members would prefer a system that focuses more on recycled material content rather than the collection of discarded products and packaging. Such a system would allow businesses to collaborate with "in fact" recyclers. In every major city in Vietnam, and throughout the countryside, recyclers operate as individuals, small enterprise and villages. In some cases, recycling is a centuries old village occupation. We understand fully the environmental and health impacts of these villages and enterprises. However, shutting them done gradually or suddenly risks losing the knowledge the recyclers have of both materials and markets.

Some cities have made attempts to replace this system through city level recycling systems. These attempts have all failed. There are three reasons for this. First, the infrastructure and technology required to fully comply with standards and regulations are costly. For this reason, cities often try to monopolize and centralize recycling systems so that the highest value recoverable materials can be collected, processed and sold. However, the individuals, small enterprises and communities currently collecting materials for recycling will continue to do so, albeit, now as people who remove valuable materials from the monopoly holder's waste stream. Second, given that high value materials will be diverted from the monopoly holder, there is little chance for its operations to become financially viable, and it will therefore require government subsidies to operate. And finally, after all this hardship and difficulty, the monopoly holder will need to find a market for the materials collected. Due to high capital and operations costs, these materials will be overpriced in the market. City level recycling systems are well known for storing unsold costly materials in warehouses, discarding those they cannot sell in landfills.

Our members have many other issues with the EPR regulations such as the methods for estimating recycling ratios and contributions to the EPR fund. They also note that that details on the uses and management of the EPR fund are lacking. At this time, we have only seen domestic enterprises as members of the EPR council. We also note that access to EPR funds collected as contributions from manufacturers is not detailed. Previous conversations suggest that MONRE will direct these funds to the high-tech recycling firms it wants to create. We think a better option is to use a part of these funds for upgrading of facilities used by "in fact" recyclers.

Thank you for your attention. We look forward to continued dialog with MONRE on these issues.

POSITION PAPER OF AGRIBUSINESS WORKING GROUP

The COVID-19 pandemic changed the market structure in agriculture, and many Vietnamese fruit and rice products for example have successfully entered Europe, where Thailand dominated before.

In 2023, Vietnam will continue to diversify markets, target production to satisfy export market requirements on food safety, and effectively complete post-harvest activities including packaging. We expect there to be further opportunities for export growth of agricultural products in 2023.

High inflation in export markets including USA and Europe has reduced the demand for seafood since the fourth quarter of 2022. This trend may last through the first quarter of 2023. However, it is expected that in the second half of 2023, the world economy will recover increasing demand for seafood.

2022 was a successful year in the export of agricultural, forestry and fishery products, although the agricultural sector in Vietnam faced many challenges such as high prices of raw materials; the effects of the Russia - Ukraine conflict, the production protection policy of some countries; and stricter import requirements.

The agro-forestry-fishery sector achieved new export records in 2022 thanks to the diversification of markets and products. The sector's export turnover reached 53 billion USD in 2022 with a trade surplus of 8.5 billion USD, up 30% from 2021.

Notably, fishery exports recorded $11 billion USD, a 20-year high since Vietnam joined the international market. Records were seen in shrimp, pangasius fish and tuna exports.

With high inflation and currency fluctuations in many markets and surging prices due to the Russia-Ukraine conflict, importers have been forced to consider reducing orders, Vietnamese businesses including FDI companies have needed to diversify markets and products.

Free Trade Agreements (FTAs), especially the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), have significantly benefited the domestic fishery industry, with exports to the CPTPP markets in 2022 expanding by 30% to be 27% of the country's total fishery export value.

In 2022, Vietnam rice exports hit a record 7 million tons, and rice contracts will be maintained in early 2023 due to high prices.

As a result of increased quality control measures, Vietnamese farm produce has accessed a variety of markets. Farmers and businesses have also looked at developing value-added products.
It is expected that in 2023 and subsequent years, stricter market requirements will force the sector to be more innovative, adaptable and identify opportunities to build a sustainable agricultural industry with emphasis on environmental responsibility and management and focus on circular agriculture as part of the circular economy.

Vietnam made commitments at the 26th United Nations Climate Change Conference (COP 26) to ensure production growth and protect the environment, to build sustainable agriculture, and to join the global value and food chains. Such commitments must result in specific actions for producers, crop farmers, fish farmers and FDI enterprises involved in the sector.

2023 will focus on the rural economy with more new jobs being created, the activities of cooperatives, OCOP (One Commune One Product) development, and agriculture-based tourism. All will create opportunities for innovative foreign enterprises in the sector.

In 2022 in Vietnam and throughout the world, the Agri sector needed to re-invent itself. New ideas, smart concepts, new farming models, innovation, digitization, more efficient logistics, and a greater focus on circular agriculture and environmental responsibility needed to be addressed.

For Vietnam to satisfy the Minister for Agriculture's focus on the development of circular agriculture to minimise waste and environmental damage, to increase productivity, and to shorten supply chains; we must also look at the other Ministerial priorities, which the Agribusiness Working group endorses and supports:

- Efficient water use and wastewater management,
- Minimisation of waterway and wetlands salination (notably Mekong delta),
- Monitoring of Climate Change and its effect on weather patterns,
- Development of smart agriculture systems through digital transformation,
- Tracking and traceability of clean and hygienic food,
- Development of opportunities to join the global agriculture supply chain, and
- The need for FDI companies to be more environmentally and socially responsible and concentrate on sustainable agricultural operations.

In Vietnam, there is a need to develop the agri. sector in both local industry and global markets.

We need to put a higher value on food. The greater the value of food, the less it will be wasted. Valuing food also means encouraging consumers to buy sustainable products.

Vietnam endorses the UN Sustainable Development Goals (SDGs). Not only do underdeveloped agriculture sectors produce poor harvests, leading to hunger and unhealthy consumption patterns; they're also linked to poverty, social instability and flows of migrants seeking a better life. But fortunately, the opposite also applies. Sustainable agriculture can help achieve SDGs: Reduce hunger, improve peoples' diets and living conditions, and raise incomes.

New applications in agriculture are often based on traditional knowledge or farming wisdom. Following traditional knowledge doesn't mean that circular agriculture will take us backwards; rather, advanced breeding techniques, robotization and precision farming using satellite data and drones will also play a big role in the farms of the future.

One of Vietnam's development orientations for 2021-2030 is to develop agriculture based on digital transformation and linkage of domestic and international markets.

Vietnam has been promoting digital transformation in many fields, in which, agriculture is a priority. But with increasing requirements of the export market, in particular, Vietnamese agriculture must increase its competitiveness and adapt to new conditions by applying smart technology to production.

Therefore, Vietnamese agriculture needs to apply technology and digital transformation in production and business to create a turning point in agricultural production, moving from a traditional agrarian

economy to an agricultural economy based on scientific technology and digital transformation, including circularity.

The Covid-19 pandemic has been both a difficulty and a challenge. But it is also an opportunity for foreign agribusiness investors to take a lead role in smart efficient agriculture technology and methods, and to realise benefits in waste and pollution control, and in water use and management.

As the pandemic continues, the government's goal of recovering economic development in the agriculture sector will face further difficulties. Agricultural development also faces challenges from other areas; crop and animal diseases, climate change, natural disasters, drought, and saltwater intrusion - all which continue to negatively affect production.

Other problems include the slow recovery of supply and value chains, a lack of labour, and the congestion in transporting agricultural products to ports and distribution centres.

CONCLUSION

The Vietnamese agricultural sector has fared better than most other production and manufacturing sectors, under the pressures of the COVID-19 pandemic.

While recognising the importance and contribution of local farmers and circular agriculture, there is a need to consider further movement to larger-scale farming operations away from smallholdings – realising improved quality management, minimal pollution, energy savings, and general efficiencies leading to better quality traceable products, and effective disease control.

There is also a need for an accelerated drive to digital transformation bringing with it Smart Agriculture which allows for better water, feed, fertiliser, traceability and waste management.

And there is a need for improved logistics and supply chain management not only to allow Vietnam agriculture to join global supply chains but also to allow affordable and efficient movement of goods and materials within the country between provinces and distribution hubs and centres.

This all means that Vietnamese agricultural, forestry and aquaculture products from local and foreign companies will be more competitive in the international market and be able to satisfy stringent phytosanitary and other quality standards, including traceability and packaging.

POSITION PAPER OF INVESTMENT AND TRADE WORKING GROUP

I. REGARDING FOREIGN INVESTMENT

Two years after the issuance of the new Investment Law and the new Enterprise Law that took effect in 2021, there has been many impacts on how investment and business are conducted in the Vietnam. We offer our feedback and suggestions below so as to support the resilience and advancement of the Vietnam business environment.

1. Uncertain requirement to amend IRC to conduct on-the-spot importation

Under Article 3.3 of Decree 09/2018/ND-CP, the importation right of a foreign invested enterprise ("**FIE**") means *"the right to import goods from foreign countries into Vietnam for sale to traders that have the right to distribute those goods in Vietnam…."* Based on the language of Article 3.3 of Decree 09/2018/ND-CP, the Ministry of Industry and Trade interprets that the FIE is only permitted to import products from foreign countries into Vietnam. The FIE is not permitted to import products on on-the-spot basis because such product does not come from foreign countries and the FIE's importation right does not include the right to import on-the-spot. On the other hand, the regulation on on-the-spot export and import under Circular 04/2007/TT-BTM has expired. This current regulation makes it impossible for FIE to import processed goods and technology transfer on the spot. Especially in the context of global logistics activities being heavily affected by the pandemic, this greatly affects the logistic chain, increasing expenses for businesses and prolonging the time the products reach the consumers.

We recommend the Government to issue guidance allowing FIEs, which have registered general export and import activity on their IRCs, to conduct on-the-spot importation right as soon as possible to speed up the circulation of goods and promote trading activities.

2. Granting investment incentives

It is encouraging that there are laws and regulations providing for investment incentives.

However, there are cases when some foreign investors applied for the grant of the investment incentives provided by law, the competent authorities hesitated to grant those incentives even to the leading companies in the industry because those authorities became overly cautious as to recognizing the fulfilment of the conditions to enjoy the applicable incentives. In such situations, the purpose of the laws and regulations which provided the incentives will not be achieved. Also, in the past, there have been cases in which the incentives granted to the investors have been adversely affected by the revision of laws and regulations. Recently, the application of Decision No. 10/2021/QD-TTg which set higher criteria for high-tech enterprises since 30 April 2021 ("**Decision 10**"), raised a similar concern.

To enhance protecting legitimate interests of investors, we recommend the following:

(a) If the laws and regulations provide an incentive for investors, the laws and regulations must clearly describe and elaborate on the conditions to grant such an incentive so that the competent authorities will not hesitate to grant the incentive.

(b) The incentives granted and/or lawful status of the investors shall not be deprived retroactively as well as in future during the period of the operation term of the enterprises

or the period provided by the law on the grounds of changes in laws and regulations or policies after the grant, and the investors shall continue to enjoy them in accordance with the conditions at the time when the grant was given.

3. Market entry conditions applicable to foreign investors

Under Articles 9.1 and 9.2 of the Investment Law, Articles 17.1 and 17.2 of Decree 31/2021/ND- CP, except for business sectors stated in Appendix I of Decree 31/2021/ND-CP, foreign investors are entitled to market entry conditions same as domestic investors. Based on the above, it is expected that all conditional business sectors with market entry conditions specifically applicable to foreign investors shall be comprehensively listed therein. And, the foreign investors are entitled to access the market as domestic investors if they engage in a non-listed sector.

However, the above regulation is not entirely suitable in the situation wherein foreign investors invest in business sectors that are not listed in Appendix I, but the specialized regulations prohibit the ownership of foreign investors. As an example, cyber information security services are unlisted in Appendix I of Decree 31/2021/ND-CP. However, foreign investors are not allowed to hold any shares in a company providing cyber-information security testing and evaluation services because the FIEs are disqualified to obtain a license for provision of cyber-information security testing and evaluation services under Article 42.2 of the 2015 Law on Cyber Information Security.

The above conflict creates confusion to foreign investors in applying the Investment Law and Decree 31/2021/ND-CP in those sectors. We suggest to carefully identify business sectors prohibited under specialized regulations and to update Decree 31/2021/ND-CP accordingly. Also, we encourage the Government to keep market access open to foreign investors, in particular for sectors where Vietnam has not introduced limitations in international treaties.

4. Requirement for obtaining the IRC for business locations, branches of FIEs

With respect to FIEs operating under the IRC and ERC, in case these companies wish to expand their business by establishing business locations or branches (within/ or not within the same province), the current laws on enterprise and investment (as well as the 2014 counterparts) do not set out a proper guidance on how to do it.

In practice, some provinces permit the FIEs to establish branches, business locations without requiring the FIE to set up new investment project for each new location because they, the authorities, believe that these FIEs have the right to utilize their investment capital to inject into one or more business locations. However, some provinces require the FIEs operating under an IRC, to obtain separate IRCs for each to- be-established business location, or branch. The discrepancy of each province in implementing these requirements creates confusion for the investors.

We recommend that new legislations are needed to more clearly regulate this matter and we suggest that they should give the investors/companies the right to amend the investment capital as shown on the issued IRC, or to apply for a new IRC for each new location. In addition, with respect to certain business lines, application for the first issuance of IRC is a time-consuming process, and if the investors are required to apply for a new separate IRC for each new business location/ branch, it would cost the investors a considerable amount of time.

5. Inconsistency in regulating FIEs

A FIE is established by way of:

(a) Green-field establishment: applying for IRC, then the ERC; or

(b) Acquiring contributed capital or equity from the owners/ domestic investors: applying for M&A Approval, then applying for change of the owner on the ERC or updating the shareholders' registry.

In principle, a company with foreign ownership is established by either method (a) or (b) shall enjoy similar treatments under the laws. However, a company established by (a), and (b), will have the following differences:

- With respect to (a), such company shall have the IRC, time-limited investment project, limitation on loan capital, and if there are any changes with respect to duration of the project implementation, to limitation on loan capital, then the company shall need to apply for an amendment of the investment project.

- With respect to (b), such company is not issued with/ does not have an IRC, therefore, the company will have no limitation for investment term and loan capital.

We recommend that there should be additional regulations to ensure that companies (a) and (b) are subject to the same treatment under the laws. Such unification of laws regarding these two types of companies (a) and (b) is expected to unify the overall management for FIEs.

6. Government guarantee under the Investment Law

We would like to seek for various government guarantees from the viewpoint of ensuring bankability in order to ensure the loans from international financial institutions for large-scale infrastructure investment projects by flexibly applying special investment assistance or investment assurance provided by Article 20 of the Investment Law and Article 3.2(a) of Decree 31/2021/ND- CP. In recent years, there has been a tendency that many investors are trying to obtain the permits for these large-scale infrastructure projects under the scheme of the Investment Law instead of in the form of a PPP project because of the prolonged investment process under the PPP regulations. The government guarantee under the Investment Law shall also be granted for the eligible investors in PPP projects to ensure bankability of these projects.

7. Continuous use of land use rights and the factories after the expiry of joint venture terms

There are a number of foreign companies invested in Vietnam in the early 1990s and established joint ventures typically with the state owned enterprises which contributed its land use rights as capital. However, the term of those joint ventures, typically 30 years, is to be expired. In particular, quite a few industrial zones and processing zones have been established since a long time agoand are approaching the end of their land use duration (most noticeably, Tan Thuan Export Processing Zone will reach the end of its project life by 2041). However, there is still no clear guidance and policy on the rights and obligations of tenants that are operating within these industrial zones in the event the relevant industrial zone developers terminate its land lease with the State. Given most of such foreign investors wish to continue to operate their projects in Vietnam, we recommend the Government to grant

continuation of those investment projects, including continuous use of their land use rights and the factories with predictability after the expiry of the term of those joint ventures.

8. Investment reporting is required of all FDI companies when the reporting under laws is required by a certain category of companies

By the Investment Law, an economic organization which is implementing the investment project must file the quarterly and annual reports on the National Portal. For amendment of the investment registration certificate, only reports per Form A.I.12 is required. Reports on supervision and assessment of the investment are required for very high profile and/or important projects. By practice, the local DPIs have insisted on completion of various report for amendment of the IRC for all kinds of investment projects (even small scaled projects), e.g. online report from the first registration of the investment project, offline reports on supervision and assessment of investment in addition to reports under Form A.I.12. DPI will not amend the IRC until all the reports have been completed. The said reporting requirement took a lot of time for the investors/economic organizations to complete and caused much long delayed in the IRC amendment process.

II. REGARDING LICENSING PROCEDURE

1. Legalized document in corporate licensing

In practice, foreign investors must prepare and submit many legalized copies of one type of document in one transaction. Further, local authorities have imposed different validity terms of legalized and certified documents at their discretion, from 3 to 6 months, in the absence of an explicit regulation on this matter. The preparation of many legalized copies of one document is costly and time-consuming.

We propose the following flexible approaches:

(a) The local authorities should accept certified true copies of the legalized document instead of requesting the original legalized document (many certified true copies can be prepared for one legalized document). The use of certified copy is in accordance with Article 3.2 of Decree 23/2015/ND-CP, under which certified true copies have the same legal effect as the original copy.

(b) The local authorities should not impose a strict limitation on validity term of legalized and certified documents for so long as their contents remain unchanged. The reason is that enterprises and investors shall take responsibility before the law for the legality, truthfulness and accuracy of the information declared in documents submitted to the authorities in accordance with Article 4.1 of Decree 01/2021/ND-CP and Article 6.1(a) of Decree 31/2021/ND-CP.

2. Licensing authority's request for more documents other than regulatory ones

The current regulations (i.e., Article 9.2 of Decree 01/2021/ND-CP and Article 6.1(b) of Decree 31/2021/ND-CP) prohibit local authorities from requesting additional document for licensing purpose other than those prescribed by laws. In practice, it is contrary, which could significantly cause the delay of investment and enterprise registrations and further incur the investors/enterprises additional costs for negotiation and preparation of such documents.

We recommend a direction to be issued to cause licensing authorities not to require any additional documents other than the regulatory ones and such direction should be published on the website of the Ministry of Planning and Investment ("**MPI**").

3. Guidance on "other content" of enterprise and investment registration documents to be notified to local authorities

It remains unclear what "other content" of the enterprise registration documents must be notified to the authority in case of any change under Article 31.1(c) of the Enterprise Law or "other content" of the investment registration documents to be updated on the National Investment Information System under Article 63.2 of the Investment Law. For example, the enterprise registration documents include the first charter of the company. It may be interpreted that any amendment to charter afterwards must be notified to the local authorities. However, there is no regulation guiding this matter, so the authority is unsure how to handle this issue. In practice, certain local authorities refused to receive notification on amendment to charter.

We recommend the Government's guidance on what Article 31.1(c) of the Enterprise Law and Article 63.2 of the Investment Law refer to, and if it is not the intent of the lawmaker to ask for conduct notification on change of other contents which are not specified under the said articles, please clarify that such changes are not required to be notified or updated.

4. Inconsistency in licensing procedure regarding capital/ share transfer

In the applications for (a) ERC amendment of multi-member limited liability company on changes of capital contributing members due to capital transfer and (b) notification on the changes of foreign shareholders of joint stock company, one of the required item is "*transfer agreement or documents evidencing the completion of the transfer*". However, in practice, some DPI further requires "*documents evidencing the completion of the transfer*" even though the transfer agreement has already been included in the application.

Further, due to the lack of guidance on "*documents evidencing the completion of the transfer*", there is a difference between the requirements given by each DPI. For example, while some DPIs only require a confirmation from the parties that the transaction has been completed, others require a confirmation from the bank on the transfer of capital transfer price.

We recommend that (a) detailed guidance on "*documents evidencing the completion of the transfer*" should be issued, (b) consistent implementation by DPIs that one of two documents (i.e., transfer agreement or documents evidencing the completion of the transfer) is required for this procedure.

5. Amending certain details of the ERC

The application documents for revisions of certain details of the ERC, as required by Article 30.1 of the Enterprise Law, which are not material, such as change of name, address of capital contribution members or owner, are not specified under the law, but the time schedule is 10 days from the change.

As a matter of practice, in case such changes relate to foreign investors, such as their head office address, they must wait for the foreign authority to issue the amended license and then, conduct the legalization process of the amended license together with other relevant

documents before sending them to Vietnam. It is very difficult to meet the limit of 10 days.

Therefore, we recommend giving clear guidance on the documents that are required for revisions of the said non-material details of the ERC, and give more flexibility for foreign investors in respect of schedule.

6. Necessity of information of chief accountant/person in-charge of accounting when establishing a new company by online submission

According to the prescribed forms (e.g., Appendices I-2, I-3 and I-4) for establishment of a new company under Circular 01/2021/TT-BKHDT, information regarding chief accountant or person in-charge of accounting is optional. According to the prescribed forms, we understand that the investors are not required to have and insert such information in the forms when establishing a new company.

However, in practice, when the applicant submits the dossier online, the information on the chief accountant/ person in-charge of accounting might be a must-have information in order to be accepted as a valid and complete dossier, depending on the requirement of each provincial DPI Therefore, the requirement seems to be incompatible with the law in some provinces. We suggest MPI should remove such requirement from the current online registration system and issue a direction to explicitly instruct the DPI not to require the chief accountant/person-in-charge of accounting information at establishment date unless voluntarily provided for by the applicant. Such direction should be published on the MPI website.

7. Time of entitlement of members'/shareholders' rights and obligations

According to Article 66.5 of Decree 31/2021/ND-CP, rights and obligations of foreign investors as members or shareholders of the target company arise upon completion of procedures for changing members/shareholders (i.e., procedures for amending ERC or notification on change of foreign shareholders with DPI under the Enterprise Law).

However, according to Articles 28.3, 30.1, 47.5, 52.2, 124.4 and 127.6 of the Enterprise Law, the subscriber or transferee of the capital or shares becomes the member/shareholder of the target company if his/her/its information is fully recorded in the members' registry and the updated ERC (in case of multi-member limited liability company) or shareholders' registry (in case of joint stock company).

Based on the above regulations, the foreign investors are uncertain on when they can actually be considered as the members/shareholders of the target company legally. We suggest MPI to correct Article 66.5 of Decree 31/2021/ND-CP to be consistent with the provisions in the Enterprise Law in relation to joint stock company.

8. Charter capital shown on the ERC

There should be explicit regulations to distinguish between charter capital as shown on the ERC, and contributed capital for implementation of the project.

In case the FIE has multiple investment projects, it is not clear whether it would be a compulsory requirement to include the contributed capital of all such projects as the total charter capital of the FIE.

According to the Enterprise Law, the charter capital is total assets contributed to the enterprise by the owner. According to the Investment Law, contributed capital for implementation of investment project is the capital contributed to the project by the investor/ owner for the implementation of such project.

Contributed capital in this case can be either (a) additionally contributed by the investor/ owner, or (b) generated from the retained profit of the company.

In case the company is required to include all the contributed capital as charter capital, with respect to case (b) above, the investor/ owner does not actually contribute capital into the company any more amount, meaning it is not clear whether or not contributed capital in such case is considered as additional charter capital of the company.

9. Non-acceptance of application to amend Construction Operation License of foreign contractor

Under construction laws, a foreign contractor must obtain the construction operation license in order to conduct construction activities in Vietnam. There is a case that a foreign contractor, which already obtained a construction operation license, wishes to amend such license. The Ministry of Construction ("MOC") however refuses the submission because (i) the current applicable Decree No. 15/2021/ND-CP does not provide detailed circumstances and procedures for such amendment, and (ii) the draft Decree amending Decree No. 15/2021/ND-CP (which provides detailed circumstances and procedures) is pending for issuance. The MOC's refusal may impact the construction project's progress and the foreign contractor's activity because it could not obtain the necessary license.

We recommend the Government to (i) provide guidance on the amendment of construction operation license in absence of the circumstances and procedures to such amendment under Decree No. 15/2021/ND-CP, and (ii) finalize and issue the Decree amending the Decree No. 15/2021/ND-CP soon.

10. MOIT approval for retail outlet licenses is currently not moving due to internal organizational issues. Many applications have been pending for substantially longer than the statutory timeline causing significant uncertainty and financial losses for investors

Under Decree 96/2022/ND-CP, the MOIT has been restructured to merge the prior Department of Planning and Department of Finance and Enterprise Innovation into one new Department of Planning and Finance (Article 3.1 of Decree 96/2022/ND-CP on MOIT's function, task, power and organizational structure, compared to Articles 3.1 and 3.2 of the predecessor Decree 98/2017/ND-CP). Decree 96/2022/ND-CP was issued on 29 November 2022 and we understand implemented shortly thereafter. Before the restructuring, the Department of Planning was responsible for the review and approval of retail outlet license applications. However, after the restructuring and merger of departments, no authority has been decided yet and, as a result, until now, no retail outlet licenses have been approved that we are aware of since the restructuring. There is no indication when this situation will be resolved.

At law, issuance of retail outlet licenses (for outlets not required to conduct economic needs tests) should take 23 working days, of which 7 working days are allocated for the MOIT to review and provide opinions to the relevant DOIT (Article 28 of Decree 09/2018/ND-CP). However, at present, we understand there are around 100+ applications which are 'stuck' at

MOIT level without any formal explanation or communication with investors. It is unknown when the MOIT will action these applications.

Until recently, it was typically expected that a retail outlet license application would be handled in approximately 30 days in practice. At present, due to the current structural issues at MOIT level this is taking substantially longer there is no end in sight despite frequent contact and requests for action/ information.

Foreign investors in the retail sector, unlike their domestic counterparts, must go through a lengthy licensing process, usually involving at least four licenses (IRC, ERC, trading license and retail outlet license). Investors are required to inject, typically substantial, capital in the country before they know they will be permitted to open a specific outlet, even if it is their first outlet. At minimum this is the full amount of registered charter capital and typically also additional capital required for operational purposes. It is also usually necessary for investors to spend considerable funds to fit out outlets and pay rent on premises before their retail outlet licenses are issued. This is due both to commercial necessity and also the practice of the licensing authorities to require submission of executed lease agreements in retail outlet license applications despite the fact the relevant regulations contemplate submission of an MOU to lease premises.

While the retail sector regulations would benefit from general review and overhaul to facilitate the investment climate, there is currently an urgent special need to address the blockage at MOIT level so that investors can open doors. The unnotified and unexpectedly long delay at MOIT level currently is causing substantial loss for foreign investors.

Investors have an expectation that statutory procedures will be followed and make their investment and capital expenditure decisions accordingly. We request that necessary steps be taken promptly at MOIT level to unblock the current status quo so that existing applications can be processed quickly and with a view to future applications being handled within the statutory timeline. This will send a positive message to investors currently incurring substantial costs, uncertainty and projected losses. It will also facilitate tax revenue for the government sooner rather than later in the form of CIT and VAT payments and open up employment opportunities at retail stores.

In addition, we separately request comprehensive review of the retail sector regulatory environment for foreign investors. We submit that it is neither necessary or valuable for the MOIT to effectively approve or otherwise opening of retail outlets, particularly were no ENT (economic needs test) is involved, when the relevant local authorities (DOIT) approve the outlet opening. Further, we recommend that foreign investors who have already obtained relevant IRCs and trading licenses should not be required to obtain an additional retail store outlet to open at least their first outlets.

11. Unclear definition and inconsistent understanding in relation to obtaining the M&A Approval

Pursuant to Article 26 of the Investment Law, a foreign investor must seek a preliminary approval ("**M&A Approval**") if it intends to acquire equity of an existing company. Article 26 of the Investment Law has clarified the instances where M&A Approval procedure is required, specifically as below:

- an increase of foreign ownership ratio in a target company engaging in business lines included in the list of conditional sectors for foreign investors;

- an increase of foreign ownership ratio in a target company to more than 50%, including the case where the increase is from 50% or less to more than 50% of the charter capital or from more than 50% to a higher ratio;
- a capital contribution or capital acquisition of a target company, which has already obtained land use right certificates for the lands located within areas having an effect on national security, such as sea-islands, borderlands and coastal areas, etc ("**Security Areas**").

Apart from the above, an M&A Approval will not be required. Nonetheless, we list out the following concerns:

(a) In practice, several investment registration authorities have provided guidance that an M&A Approval will be required if the new investor(s) bears different nationality from the current investor, even if the acquisition does not change the foreign ownership ratio in the existing company (e.g., a Singapore investor has a subsidiary or a joint venture in Vietnam that does manufacturing, and then sells its equity in such company to a Thai investor).

(b) Further, the current definition/interpretation of "Security Area" under Article 2.8 of Decree 31/2021/ND-CP is too broad, so this makes it difficult for local investment registration authorities, the target companies, and foreign investors difficult to determine as to whether a piece of the relevant land is located at the Security Areas or not. This broad definition leads to the practice that various local investment registration authorities have advised the foreign investors and target companies to apply for and obtain M&A Approval as long as the target companies own the relevant land use right.

(c) In addition, there is inconsistency regarding the entities responsible for submitting the application dossier for M&A Approval as regulated under Article 26 of the Investment Law and Article 66 of Decree 31/2021/ND-CP. In particular, under Article 26 of the Investment Law, this obligation is imposed on the foreign investor while under Article 66 of Decree 31/2021/ND-CP, the target company where the foreign investor plans to acquire equity or contribute capital bears this obligation.

We recommend (i) guidance/instruction to the local investment registration authorities that an M&A approval is not required if there is no change in the foreign ownership ratio in the first two cases; (ii) guidance on definition of Security Area; and (iii) confirmation on applicant of the M&A Approval.

12. Lengthy procedure for M&A Approval issuance as corresponding responsible local authorities lack consistency

Under the previous Investment Law, M&A Approval were only issued by the provincial Department of Planning and Investment (DPI). Currently, pursuant to the Investment Law 2020, with respect to the companies located in industrial zones, export processing zones, high-tech zones, or economic zones, the Management Authorities of such zones will have the power to issue the M&A Approval. However, in practice, we have seen a case where the Management Authority of an industrial zone requested the local DPI to give opinions for the application for M&A Approval. The local DPI took three months to issue the response (indicating no objection and no comment), which significantly delayed the whole approval process.

III. REGARDING LAND, HOUSING AND REAL ESTATE BUSINESS

1. Application of new Investment Law (which took effect in 2021) vs the Land Law

(which took effect in 2014) vs the Law on Real Estate Business (which took effect in 2015)

The Investment Law (Articles 29 to 32) has provisions on investment policy approval and investor selection. In general, these provisions relate to selection and approval of investors (by auction or law on bidding) where the project involves (amongst other things) large-scale use of land, has great effect on the environment, involves substantial relocation, residential housing, afforestation etc. It also provides which level of authority (e.g., National Assembly, Prime Minister, or people's committee) has the capacity to give such approvals.

The Land Law (Articles 52 and 59) has (amongst other things) provisions on land allocation, land lease and change of land use purpose in relation to investment projects for certain lands (e.g., paddy land, or special-use forest). There are also provisions which stipulate the different types/levels of authority with the capacity to approve such specific use or change of land use.

While these two laws are trying to regulate different aspects of land use and investment approvals/selection, it can create confusion for investors who are working out whether or to what extent these provisions may be applicable to the investment and land site and use they are contemplating.

Although there has been new guidance under the recently issued Decree No. 02/2022/ND-CP guidance the Law on Real Estate Business, the guidance has thus far failed to introduce clarity. Article 9 of Decree No. 02/2022/ND-CP provides two cases where the "investment regulations" would apply instead of the real estate regulations:

- Real estate projects in which the investor has been approved under [Article 29] of the 2020 Law on Investment;
- Real estate projects in which the investor has received the Investment Registration Certificate *in accordance with the 2020 Investment Law*.

Many developers (e.g. of township projects) are uncertain which law would apply in the case where a real estate project has been approved under previous legislations (i.e. before the 2020 Investment Law). Furthermore, the draft (amended) Law on Real Estate Business appear to not offer much more guidance on this issue.

The project transfer procedures are quite complicated. As such, there is a need to provide guidance for those cases that are subject to the Investment Law or the Law on Real Estate Business.

2. Inconsistency on when the land use demand document needs to be done

In order to be granted with land from the State (either in the form of land lease or land allocation for residential development), the investor must submit a so-called "Land Use Demand Document" for consideration to propose the location, size and other land requirements of the desired project.

However, the laws are not clear on exactly when this needs to be done.

Article 33 of the Investment Law provides that the Land Use Demand Document must be included in the dossier for the investment policy approval decision. However, the land

regulations suggest otherwise. In particular, Article 7 of Circular 30/2014/TT-BTNMT provides that the Land Use Demand Document will be prepared "on the basis of the land allocation and land lease dossier" which comes after the investment policy approval is issued. As such, it appears that the authorities would essentially have to appraise the land use proposals of the investor twice.

3. What constitutes a FIE

Under land, housing and real estate business regulations, there is no clear guidance as to what constitutes a FIE - and the general understanding and interpretation is that once a company has any form or level of foreign investment, it would be considered as a FIE, and face restrictions under housing and real estate business regulations. In practice, foreign investors often set up multiple layers of ownership to attempt to mitigate this uncertainty.

To be compatible with the Investment Law, it is proposed that an enterprise with 50% or less foreign investment should be regarded as a domestic investor when it applies to make a next level investment.

4. Increase of limitations for FIEs conducting real estate activities in Vietnam

Under the 2014 Law on Real Estate Business (Article 11.3), there is a specific right for FIEs to invest in the construction of properties for real estate business (e.g. logistics, warehouse leasing) within industrial zones, industrial clusters and hi-tech zones. However, the latest draft amended Law on Real Estate Business appears to have deleted this right (whilst keeping the same for Vietnamese residing overseas). As many FIEs are subleasing industrial land to conduct real estate business, this potential change will introduce many uncertainties and hinder investment on industrial properties in Vietnam.

5. Access to land for investment project of FIEs

As a common understanding, outside of subleasing land in industrial zones, FIEs can only lease land directly from the State, or receive contribution of capital in the form of land use rights from a Vietnamese company (not from individuals). The procedure for the former form can be costly and time-consuming. The latter form does not suit foreign investors not wanting other partners having shares in the FIE.

However, Article 153 of the Land Law allows FIE to use "commercial land; non-agricultural production land" through "leasing land from an economic organization". This implies a right to lease land from a Vietnamese company to carry out a project; however, there is no clear case in practice and no clear mechanism to enable a FIE to lease the land from a local land owner as a basis to be approved an investment project. The only possible option is to seek approval for an investment project on the basis of a lease of the asset on the land (i.e., a warehouse, factory), but not the land itself.

6. Land speculation

International developers in the industrial and logistics sectors are generally struggling with land access for their projects due to unreasonably high prices from local vendors (which appear to be land speculators).

This hinders foreign investment (and inflow of capital, job creation, etc.) at a time when Vietnam should be enabling capacity building in IPs, logistics and warehousing to further

enhance its supply chain capabilities.

There appears to be limited policies and means for the Government to manage such local vendors/speculators. Currently, there are draft proposals to rein in individual or "rogue" property brokers by requiring them to be employed by a company and to face tougher licensing exams. Although this may help to increase the standard of brokerage and avoid speculation, it is only part of the picture. There should be clearer and stronger measures for the land to revert to the State by local companies which delay their timeline and schedule to implement land use projects. Local governments themselves should become more critical when evaluating the credentials of investors.

7. Confusion over procedures to extend a project's duration and land use term

Under investment and land laws, the investor is required to extend the land use term and project's duration within the same minimum time period, which is at least 6 months before their expiry. It is unclear which should be completed first.

In particular, Article 74.1(a) of Decree 43/2014/ND-CP (detailing a number of articles of the Land Law) provides that (a) the investor must apply to extend the land use term at least 6 months before its expiry; and (b) if the project's duration has to be extended, then the investor must first obtain the authorities' approval regarding the extension of the project duration.

Article 55.3 of Decree 31/2021/ND-CP (guiding and implementing the Investment Law) provides that the investor must apply to extend the project's duration (again) at least 6 months before its expiry.

If the investor applies to extend the project's duration at least 6 months before its expiry, then there would not enough time to extend the land use term. In practice, the authorities do not allow either procedure to be carried out too soon (i.e., significantly more than the 6 months).

There have been cases where the investment authority requires that the investor obtain an approval to extend the land use term. However, by law, it is impossible to extend the land use term prior to extending the project's duration.

8. Land compensation procedures

Under the Land Law (Articles 67 to 69), land clearance procedures must be conducted by competent authorities. The land is only handed over to the company once it is clear, and after the payment for the compensation, support and resettlement are all settled. In other words, land clearance procedures often leave investors in a passive role waiting for results from government land clearance actions, which may take months and years.

In practice, due to constraints in the government's resources, the investors may have to advance the compensation money and negotiate with the households whose land needs to be recovered, which can be very challenging for investors.

In this regard, foreign investors are at a disadvantage in the follow respects:

(a) they often lack the experience and capacity to actually deal with local households;

(b) there may be options such as a nominee structure where a party would perform this work

for the investor, or a land reservation agreement with the households. However, these agreements can be easily reneged by the counter-party; and

(c) options such as leasing land directly from the households are only open for local companies.

9. Mortgageability of land use rights

Companies in Vietnam have challenges getting access to competitive financing resources outside Vietnam because they are not able to mortgage their factory and land use rights to foreign lenders.

Legislators could consider allowing an amendment to the Land Law that would enable companies in Vietnam to mortgage land use rights to offshore lenders.

10. Developing the legal framework for the second-home market[1]

(a) For second-home products to be built on commercial and service land (or non-residential products), it is proposed to have consolidated and consistent law resolving the following:

- **Regarding strata titles (so called "Pink Book")**: Would the Pink Book for each unit be issued directly to the buyers, similar to residential products? Would the term be a fixed 50 years or in accordance with the project's term? The possibility of foreign buyers receiving a 50-year Pink Book?

- **Regarding license for real estate business lines**: Corporate buyers (including FIEs) established under Vietnamese law would need to be licensed with the appropriate real estate business lines when entering into a long-term lease or sub- lease of non-residential units, or joining the rental pool program in accordance with the Real Estate Business Law.

- **Regulations on the management, usage and trading of the second-home products**: There needs to be further clarification.[2]

(b) For the second-home products to be built on residential or mix-use land (or residential products), clarification is needed for the following:

- **Regarding lease of unit of branded residence projects**: The primary purpose of residential land and products are for residential uses, not for commercial uses. Thus, for branded residence projects (involving international operators) built on residential land, it is not clear whether the units can be leased out and operated as hotel rooms, on daily basis and for at least 10 to 20 years without contravening the Housing Law.

- **Regarding license for real estate business lines**: Corporate buyers (including FIE) established under Vietnamese law would need to be licensed with the appropriate real estate business lines when entering into a long-term lease or sub-lease of residential units, or joining the rental pool program in accordance with the Real Estate Business Law.

[1] Products such as: urban condotels and branded residences, hospitality & resort condotels and villas and shop houses, farm-stay.

[2] Regulations to be clarified: The establishment and power of the home owner association? Maintenance and management services and fees? Mandatory requirements and other qualifications on the professional management companies? Other conditions on facilities and technical infrastructures, standards and grading, fire-fighting and preventions, environmental issues? Hygiene and safety? Security?

11. Regarding the new Draft Law on Land ("Draft Land Law")

(a) Article 5 of the Draft Land Law

The current Draft Land Law of January 2023 only stipulates that "*foreign-invested economic organizations" and "foreign organizations with diplomatic functions*" are land users, but it is silent on what land users will include "foreign individual" or "foreigner".

Article 159 of the Law on Residential Housing stipulates that foreign individuals are allowed to own houses in Vietnam. Article 14.2 of the Law on Real Estate Business also stipulates that foreign individuals may buy, rent, or lease-purchase houses according to the residential housing laws. Article 19.1 of the Law on Real Estate Business provides for "*The purchase and sale of houses, construction works must be associated with land use rights*".

If it is not specified that foreign individuals or foreigners have the right to use land, this will be contrary to the above provisions. In practice, whilst the real estate/residential sector is generally governed by the Departments of Construction, the actual process of issuing title to foreign individuals are carried by the Departments of Natural Resources & Environment. Foreigners are facing difficulties in receiving their own land use rights certificates to evidence ownership of residential properties, as such explicit recognition of this right in the Land Law will assist in resolving this.

In addition, a more consistent legal framework will attract foreign individuals to trade and own new types of real estate such as condotels, tourism villas, resort villas, bungalows, officetels, shophouses.

In the interest of ensuring the consistency between real estate/residential and land regulations as well as resolving related issues, consideration may be given to adding "foreign individuals" or "foreigners" to Article 5 of the Draft Land Law regarding the provisions on "Land users".

This will aid in clarifying the use of land by "foreign individuals" or "foreigners" for real estate types such as condotels, tourism villas, resort villas, bungalows, officetels, shophouses.

(b) Articles 5.7 and 30 of the Draft Land Law

The current Draft Land Law has revised the definition of "foreign-invested economic organization" as a category of land user, as compared with the previous draft. In particular, the Draft Land Law revises the relevant category of land user as follows:

"Foreign-invested economic organizations ~~that must carry out the investment procedures applicable to foreign investors in accordance with regulations on investment (hereinafter "foreign-invested economic organizations."~~

Under the previous draft, "foreign-invested economic organizations" can be understood by referring to Article 23 of the Investment Law. However, the current Draft Land Law once again cause uncertainty in determining "foreign-invested economic organizations". This was an outstanding issue of the Land Law.

Under land, housing and real estate business regulations, there is no clear guidance as to

what constitutes a FIE. The general understanding and interpretation is that once a company has any form or level of foreign investment, it would be considered as a FIE, and face restrictions under housing and real estate business regulations.

It is proposed that the previous definition be re-used (with minor adjustments) to ensure consistency with the investment regulations and ease of application, namely:

*"**Article 5. Land users***

*7. Foreign-invested economic organizations means the economic organizations whose investors must carry out the investment procedures applicable to foreign investors in accordance with regulations on investment (hereinafter "**foreign-invested economic organizations**"."*

(c) **Articles 5.7 and 30 of the Draft Land Law**

According to Article 120 of the Draft, there are only two cases of where upfront land rental from the State is the applicable form of land lease:

- Agricultural production, forestry, aquaculture or salt-making projects; and
- Land in industrial zone, industrial clusters, processing zones, and hi-tech zones.

Accordingly, every other cases with be subject to annual land rental payment by default.

However, according to Article 33 of this Draft, there is no right to switch from annual land rental payment to one-off land rental payment, apart from the two cases in Article 120 mentioned above. As a result, there is no right to transfer or mortgage the land use rights in case of annual land rental payment. In other words, the right to choose land lease form and perform transactions in relation to the land use rights is only open to two categories of land above.

This may impact new commercial real estate projects and other important incentivized projects (e.g., power projects; hospitality projects), which is subject to annual land payment, and may not have the right to mortgage and/or transfer land use rights. Furthermore, this provision conflicts with the current draft amended Law on Real Estate Business which provides that one condition (amongst others) to sell properties (condotels, officetel, etc.) to be formed in the future, is that the developer must be leasing land from the State with upfront land rental payment.

Under land, housing and real estate business regulations, there is no clear guidance as to what constitutes a FIE. The general understanding and interpretation is that once a company has any form or level of foreign investment, it would be considered as a FIE, and face restrictions under housing and real estate business regulations. In practice, foreign investors often set up multiple layers of ownership to attempt to mitigate this uncertainty.

Given the importance of the right to choose land rental payment form, Article 120 should be expanded to include a category for:

"c) Using land for non-agricultural production establishments; commercial and service land, land for construction of public works for business purposes."

(d) **Article 46 of the Draft Land Law (see also Article 11.4 of the draft Law on Real Estate Business)**

Article 11.3(b) of the 2014 Real Estate Business Law allows "foreign-invested enterprises" to:

"b) With regards to subleased land inside of industrial zones, industrial clusters, hi-tech zones, economic zones, [foreign-invested enterprises may] invest in building houses and construction works for [real estate] business in accordance with the correct land use purpose."

However, according to Article 11.4 of the latest draft Real Estate Business Law, this right of "foreign-invested economic organizes" has been removed.

In practice, the above-mentioned Article 11.3(b) has been the basis for many foreign investors to carry out investment project in relation to leasing warehouses, factories, logistics services, etc. As such, the removal of this right will massively impact this business. Meanwhile, the draft Real Estate Business Law fails to provide clear transitional clauses for existing and operating investors.

Moreover, according to Article 46 of the Draft Land Law, foreign-invested economic organizations that are subleasing land in industrial zones shall have the rights prescribed under Articles 34 and 35 in the Draft; this includes the right to "lease assets under their ownership attached to the land".

There is no rationale to restrict the right of foreign investors to engage in real estate activities in industrial zones, industrial clusters, hi-tech zones, and economic zones. As such, the right to "invest in building houses and construction works for [real estate] business in accordance with the correct land use purpose" must be reinstated in the Real Estate Business Law.

IV. REGARDING TAX

1. 0% VAT treatment for exported services

The requirement for services being consumed outside Vietnam is vague and not defined in any way in the law. This leads to discretionary interpretation of the tax authorities when taxpayers take their position to apply 0% VAT for exported services. The current practice of interpretation by tax authorities would discourage taxpayers to apply 0% VAT on exported services, which would eventually make Vietnamese service providers less competitive in terms of pricing in the international market if they have to charge 10% VAT instead of 0% VAT.

It is recommended that the MOF change the regulations with clear definition of exported services. Alternatively, exported services should be based on the status of the foreign customer and foreign source of payment for the service fee for simple tax administration.

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- **Administrative reform:** to stay competitive in the region, there is an urgent need for Vietnam to make stronger reforms by recognizing internationally adopted technical standards, removing all de-factor licensing (for example by way of registration), reporting requirements in all existing and future regulations across industries applicable to ICT products and digital services.

- **Localization:** to obtain economic efficiencies and benefits of the digital economy, foreign digital services providers should not be required to establish an entity or obtain license in Vietnam. A lighttouch, simplified notification regime should be used instead.

- **Cross border data flows:** free flow of data is critical for both global and domestic digital businesses being part of the global digital economy. Restrictions in any form on cross border data flows should be removed.

Specific comments and recommendations for key digital economy laws and regulations:

Reducing administrative procedures for ICT products

Many existing and draft laws, regulations propose requirements of registration, licensing and administrative obligations, increase the administrative burdens and costs for businesses. In the ICT sector, for example, under Decree 127/2007, Decree 132/2008, Decree 74/2018, there is a requirement of annual certification of ICT products imported into Vietnam which entails the annual recertification and all associated procedures such as quality inspection, customs clearance and reporting that are currently paper based. We suggest that where products could show compliance with established international standards, they should be cleared to entry into Vietnam without country-specific testing. We urge the Government to move toward a fully e-government model, the ICT sector to start as the pioneer to allow e-signature and e-stamping, an automatic 24/7 one-day electronic approval for product quality status between the Customs National Single Window and Ministry of Information and Communication.

Decree 71/2022/ND-CP

This amends Decree 06/2016/ND-CP to extend foreign content limitations to internet-enabled over-the-top (OTT) services. In addition to a 30-percent cap on foreign channels, the amended decree also imposes a local presence condition, requiring cross-border providers of OTT services to establish a local entity and meet Vietnamese licensure and registration requirements. The process of establishing local entity is often very legally complex and not relevant for cross border services. Those complexities can often result in certain services and products simply not being provided in Vietnam because the benefit of providing them is not as great at the complexities of having to establish a local presence. For Vietnam's creative economy to develop and grow, we recommend the Government look at specific business models and specific market demands to determine whether/where a local office and the 30% cap on foreign content limit is required, and avoid over-prescriptive content requirements.

Draft amendments to Law on Consumer Right Protection, Law on E-transactions

We applaud the government's efforts to update the law to reflect how Vietnamese consumers purchase goods and services. We note that the draft amendments to the Law for Consumer Right Protection and the Law for E-Transactions introduce new concepts concerning digital platforms/intermediary digital platforms, taken from Europe's Digital Markets Act ("DMA") and Digital Services Act ("DSA"). These EU legislations are developed and imposed in very different political, economic, and legal contexts from Vietnam. For Vietnam, the broad definitions of digital platforms and their obligations proposed in the Draft amendments to E-Transactions Law and Consumer Right Protection Law could cause confusion, uncertainty to both domestic and foreign digital service providers, thus have an adverse impact on innovation in Vietnam if not implemented properly. At this early stage of digital economy development, many Vietnamese consumers and businesses benefit from international digital services. We urge Vietnam Government to pause the introduction of digital platforms into Vietnam's Laws on Consumer Right Protection and E-Transactions, and observe first whether the developments in EU deliver benefits to businesses and consumers, to avoid disproportionate costs to innovation and investment.

Under the latest Draft E-Transactions Law as of February 2023, there are some concerns arisen and therefore our corresponding recommendations are as follows:

Firstly, the concepts of information systems serving electronic transactions, digital platforms and intermediary digital platforms need to be clarified. Under (i) Articles 3.18 and 3.19 on Definitions of digital platforms / intermediary digital platform; and (ii) Article 46.1.(c) on Categorization of information systems serving electronic transactions based on the types of digital platforms of the Draft E-Transactions Law, Digital platforms and their categories are defined in an overly broad and vague manner which may cover all types of digital / online services.

When comparing the two definitions, it can be seen that important elements of the digital platform are the purpose and function of conducting the transactions, in which, the digital platform allows parties (i.e., two or more parties) to conduct the transactions with each other, meanwhile the intermediary digital platform means the digital platform in which the owner is independent from parties conducting the transactions. The elements "provide and use the product" or "use to develop the products and services" have a broad meaning but there is no clear definition of purpose and function of digital platform. The element "use to develop the products and services" may cause confusion and misunderstanding that software development kit (SDK) and operating system can also be considered digital platforms.

The distinction between information systems serving electronic transactions and digital platforms is still not provided given the lack of definition of the former.

In addition, the Draft ET Law does not provide detailed provisions for cases where one owner/ administrator has multiple products and information systems with different numbers of users. Thus, it is unclear whether the responsibilities under Article 48 will apply (i) separately for each product / information system, or (ii) jointly at once to the owner / administrator for all the products.

Secondly, a clear definition of data message authentication services, which should clarify that data message authentication services under this Law do not cover OTT messaging services with end-to-end encryption, should be provided. Under Article 33 of the Draft E-Transactions Law on Data message authentication services, the sub-category of data message authentication services under Article 33.2 − services of sending and receiving secured data messages is still left undefined. Without any further guidance, services of sending and receipt of secured data messages may be broadly interpreted to include all services that are used for sending data messages (e.g., all OTT

messaging services). The Draft ET Law should only provide conditions and requirements for data message authentication services of a third-party that are used for storing and authenticating the integrity and reliability of data messages in case such integrity and reliability are disputed by transacting parties. Regulating services that facilitate the sending and receipt of secured data messages of all purposes (including daily communication, chit chat) is unnecessary and overkill, and may place extra burdens on both the service providers and the authorities that have to oversee this field of services.

Thirdly, the obligation of administrators of information systems serving electronic transactions to ensure availability for technical connection with the supervising systems of the State is not justifiable. Under Article 48.1.(c) of the Draft E-Transactions Law, owner of information systems and digital platforms shall guarantee being ready to conduct technical connections for the monitoring, check and report operational data to the monitoring system of state authorties in accordance with this Law and relevant laws.

It is unclear what "technical connection with the supervising systems of the State" means. The term "connect" suggests that information systems may have to be connected to local state authorities via an online portal or via a technical function. We also understand that in practice, local authorities may require companies to conduct API connection in order to provide information directly to them. Imposing such a connection requirement would unreasonably bring information security and privacy risks to the service supplier, which is a weakness that can be exploited to attack the systems of both government authorities and service suppliers. This would expose service providers to security vulnerabilities that are detrimental to not only their services but their clients' data.

In addition, the report information on direct operational data via the real-time system connection can unnecessarily consume energy and storage resources. Regarding the need for monitoring, inspection and reporting of operational data to state authorities, the draft may stipulate periodical reports (in paper documents or electronic data) to meet this demand without making an API connection that provides direct real-time information.

Fourthly, the provision on the responsibility of administrators of digital platforms serving electronic platforms to report to MIC regarding past incidents or signs and risks of the information system being abused to conduct acts that violate Vietnamese law (under Article 48.2(d)) is quite broad as it is unclear which kinds of situation shall be reviewed and assessed.

Since the expression "abused to conduct acts that violate Vietnamese law" can be broadly interpreted to include data security incidents that have already been regulated under existing laws (i.e., Circular No. 20/2017/TT-BTTTT regulating the coordination and response to cyber information security incidents nationwide), this provision might trigger overlapping issues.

Moreover, in practice, administrators of digital platforms or their designated contact points will coordinate very closely with authorities to avoid sanctions and to seek assistance in case their systems are tampered with. Hence, the necessity of this requirement is significantly reduced.

Fifthly, although Article 52.5 provides responsibilities of data processors, Data processor is not defined under this Draft Law. Under this Draft Law, data is information in the forms of symbols, letters, numbers, images, sounds or similar forms. Data message is information created, sent, received and stored by electronic means. The scope of such terms is much larger than personal data and does not match the Draft Personal Data Protection Decree ("Draft PDPD"). Under the Draft PDPD, entities are already required to have specialized staff and units in charge of personal

data protection to work with the Ministry of Public Security. The Draft ET Law now also requires data processors to have different staff/unit for data message security to report to MIC.

Regarding Article 52.5(b), requiring breach notification to users for all kinds of data breach (not just personal data breach) is unnecessary and will place an unreasonable burden on service providers. Currently, information security and network security have been regulated by Law on Cyberinformation security and Law on Cybersecurity (and Decree No. 53/2022/ND-CP instructing the Law on Cybersecurity). The above-mentioned regulations on information security, cybersecurity and cyberinformation safety already include the protection of network systems, cyberspace and data in general. For specific types of data, which need stricter protection than other types of data, personal data, the Government and MIC are also developing the Draft of DPDP.

Data message, by their intrinsic nature, is also a type of data that is not as distinctive as personal data, and therefore does not require special protection. The provisions in Article 52 are therefore overlapping and overlapping with respect to the Law on Cyberinformation Security, the Law on Cybersecurity and its guiding documents, as well as the Draft DPDP. This provision may overlap with existing regulations under the Law on Cyberinformation security and Circular No. 20/2017/TT-BTTTT of the MIC. We note that the LOCIS does not require that data breach incidents must be notified to users.

In practice, most countries only have strict requirements for personal data protection. As personal data protection will be regulated by the Draft PDPD, and information security and cybersecurity are already governed by the LOCIS and Law on Cyber Security (and its implementing Decree 53), the requirement under Article 52.5 may become redundant or even overlap/contradict with existing and upcoming regulations.

To address these challenges, we propose several solutions:

- The Ministry of Information and Communication ("**MIC**") shall clarify the concepts of information systems serving electronic transactions, digital platforms and intermediary digital platforms. The definition of digital platform is too broad and vague. It should describe the form of digital platforms (e.g., website, apps) and its purpose should be narrowed down.

  Reference from Article 5 - The e-transaction development policy of the draft, we recommend the definition shall describe the specific form of digital platform (e.g., website, application), and the purpose of the digital platform shall be narrowed as follows:

  "Digital platform is an information system creating an electronic environment under the form of a website or an application that allows parties to ***completely conduct*** ***the transaction process during the process of*** ***providing, using products or services or*** ~~***using to develop products and services.***~~ *Digital platforms include intermediate digital platforms and other digital platforms."*

  There are 2 categories of digital platforms - intermediary digital platforms and other digital platforms. The other digital platforms should also be defined and / or demonstrated with examples to clarify what their features, forms, and purposes are. The Draft Law should only use either the term digital platform or information systems serving electronic transactions if the two terms are interchangeable. If they are not interchangeable, there must be a clear distinction between these two terms in their definitions.

- The MIC shall provide a clear definition of data message authentication services, which should clarify that data message authentication services under this Law do not cover OTT messaging services with end-to-end encryption.

- We suggest removing Articles 48.1.(c), 48.2(d) and 52.5 completely. Nevertheless, Article 48.2(d) can be considered being kept if its wording are clarified.

Draft Amended Law on Telecommunications

While we appreciate the efforts of the National Assembly and the Government of Vietnam to amend and improve the Law on Telecommunications to meet the development requirements of the telecommunications sector, we are concerned that the scope of the Draft Amended Law on Telecommunications has been considerably expanded to include non-telecommunications services. Services such as internet application services in telecommunications (or "telecommunications OTT services"), data centers, are distinct from telecommunications services and not regulated by legacy telecommunications laws in the region. Regulation of these services under the Amended Law on Telecommunications is inappropriate and will create unnecessary administrative burdens and increased costs for these service providers, especially those that do not have a physical presence in Vietnam. To align with international practice and to facilitate development conditions for digital service providers, we recommend removing telecommunications OTT services, cloud computing, and data center services from the scope of the Draft Amended Law on Telecommunications.

Many newly proposed regulations under the latest version of the Draft Telecoms Law are troublesome and would significantly hinder the availability of OTT services (which are covered under the broad term of Internet application service in telecommunications) and data center and cloud computing services in Vietnam.

Firstly, both OTT services and data center / cloud services should not be considered as value-added telecoms services and regulated in the same manner as they are fundamentally different. The delivery of OTT services and data center / cloud services data center / cloud services (and hence, their ability to grow in the market) are dependent on Internet access and capacity transmission – telecoms services that can only be offered by existing telecoms operators. OTT services cannot be regulated as a telecoms service for as long as this dependency exists. This dependency is in favour of the local telecom operators, as they are able to drive revenue through data services.

Secondly, it is justifiable that telecom service providers (particularly, network operators) are subject to a broader, specific set of regulations because they deploy a public resource (spectrum) to transmit calls, messages, data, etc. Unlike OTT service providers, they also have access to exclusive rights (e.g., numbering resources) and contractual arrangements (e.g., interconnection). This differs from OTT service providers, which are operated though networks and infrastructure that are already controlled and owned by the telecom operators. As such, on a technical level, they are very different offerings.

Under the Draft Telecoms Law, offshore OTT service providers would be required to either (i) set up a representative office ("**RO**") or (ii) enter into a commercial agreement requirement with a local telco if they meet any of the following conditions:

(a) the number of service users exceeds the threshold to be prescribed by the Government; or
(b) the volume of generated service traffic in Vietnam market exceeds the threshold to be prescribed by the Government.

Cross-border data center and cloud computing services to Vietnam would also subject to the same RO/commercial agreement requirement without any triggering conditions.

Particularly on the commercial agreement requirement, this serves only as a hindrance to foreign companies that wish to do business in Vietnam. Given the fact that the number of offshore OTT service providers that have services available in Vietnam far exceeds the number of Vietnam telecom companies, it is not practically feasible for agreements to be put in place for every foreign OTT service.

Thirdly, imposing a 65% cap on foreign ownership in onshore OTT service providers would create an obstacle to competition and investment which goes against the fundamental principle of assuring an environment of fair competition in telecommunications activities under Article 4.2 of the Draft Telecoms Law. As a matter of fact, foreign investment is crucial to the growth of this area by bringing in diverse experience, knowledge and technology to Vietnam. Treating OTT service providers in the same manner as traditional telecoms enterprises and imposing such a foreign ownership cap or other limits on them would only prevent local OTT service providers from raising institutional capital from foreign investors, which would in turn hinder technology innovation in Vietnam.

Vietnam's digital transformation efforts would face a major setback, thereby diminishing the country's competitive edge on a global scale. Vietnam would be seen as an outlier, as no other major developing economy in the region has imposed such requirements on OTT service as well as data center / cloud computing service providers.

Decree 53/2022/ND-CP and draft Personal Data Protection Decree (PDPD)

We appreciated the Ministry of Public Security organized the workshop on 22 December 2022 in Hochiminh City to present key contents of the Decree 53. There remain many questions unanswered, and we would appreciate MPS's further clarifications to VBF's paper No. VBF13922 dated 13th September 2022. To achieve the Government's dual goal of growing a vibrant and innovative domestic digital economy and allowing Vietnamese companies to participate with the global digital economy and ensuring effective and enforceable obligations for all companies that handle personal data, we propose Vietnam Government to consider participating in the Global Cross Border Privacy Rules (CBPR) Forum.

Thank you for considering our paper and we look forward to our continued engagements and consultations.

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Many newly proposed regulations under the latest version of the Draft Telecoms Law are troublesome and would significantly hinder the availability of OTT services (which are covered under the broad term of Internet application service in telecommunications) and data center and cloud computing services in Vietnam.

Firstly, both OTT services and data center / cloud services should not be considered as value-added telecoms services and regulated in the same manner as they are fundamentally different. The delivery of OTT services and data center / cloud services data center / cloud services (and hence, their ability to grow in the market) are dependent on Internet access and capacity transmission – telecoms services that can only be offered by existing telecoms operators. OTT services cannot be regulated as a telecoms service for as long as this dependency exists. This dependency is in favour of the local telecom operators, as they are able to drive revenue through data services.

Secondly, it is justifiable that telecom service providers (particularly, network operators) are subject to a broader, specific set of regulations because they deploy a public resource (spectrum) to transmit calls, messages, data, etc. Unlike OTT service providers, they also have access to exclusive rights (e.g., numbering resources) and contractual arrangements (e.g., interconnection). This differs from OTT service providers, which are operated though networks and infrastructure that are already controlled and owned by the telecom operators. As such, on a technical level, they are very different offerings.

Under the Draft Telecoms Law, offshore OTT service providers would be required to either (i) set up a representative office ("**RO**") or (ii) enter into a commercial agreement requirement with a local telco if they meet any of the following conditions:

(a) the number of service users exceeds the threshold to be prescribed by the Government; or
(b) the volume of generated service traffic in Vietnam market exceeds the threshold to be prescribed by the Government.

Cross-border data center and cloud computing services to Vietnam would also subject to the same RO/commercial agreement requirement without any triggering conditions.

Particularly on the commercial agreement requirement, this serves only as a hindrance to foreign companies that wish to do business in Vietnam. Given the fact that the number of offshore OTT service providers that have services available in Vietnam far exceeds the number of Vietnam telecom companies, it is not practically feasible for agreements to be put in place for every foreign OTT service.

Thirdly, imposing a 65% cap on foreign ownership in onshore OTT service providers would create an obstacle to competition and investment which goes against the fundamental principle of assuring an environment of fair competition in telecommunications activities under Article 4.2 of the Draft Telecoms Law. As a matter of fact, foreign investment is crucial to the growth of this area by bringing in diverse experience, knowledge and technology to Vietnam. Treating OTT service providers in the same manner as traditional telecoms enterprises and imposing such a foreign ownership cap or other limits on them would only prevent local OTT service providers from raising institutional capital from foreign investors, which would in turn hinder technology innovation in Vietnam.

Vietnam's digital transformation efforts would face a major setback, thereby diminishing the country's competitive edge on a global scale. Vietnam would be seen as an outlier, as no other major developing economy in the region has imposed such requirements on OTT service as well as data center / cloud computing service providers.

Decree 53/2022/ND-CP and draft Personal Data Protection Decree (PDPD)

We appreciated the Ministry of Public Security organized the workshop on 22 December 2022 in Hochiminh City to present key contents of the Decree 53. There remain many questions unanswered, and we would appreciate MPS's further clarifications to VBF's paper No. VBF13922 dated 13th September 2022. To achieve the Government's dual goal of growing a vibrant and innovative domestic digital economy and allowing Vietnamese companies to participate with the global digital economy and ensuring effective and enforceable obligations for all companies that handle personal data, we propose Vietnam Government to consider participating in the Global Cross Border Privacy Rules (CBPR) Forum.

Thank you for considering our paper and we look forward to our continued engagements and consultations.

POSITION PAPER OF INFRASTRUCTURE WORKING GROUP

Plans - general

- Approval of NPDP8 and its implementation plan.
- Gas sector regulations and how they will impact LNG projects.

Projects under Law on Investment

- Clarification on whether state protection measures will be made available to address country and project risks for non-PPP projects under the Law on Investment (as opposed to the Law on PPP).
- If so, will they be equivalent to those for PPP projects?

PPP

- Development of sector specific policies to enable long term and large-scale energy and infrastructure investment. The Law on PPP is not working - no project has been implemented and financed on a project (non-recourse) basis under this law. A thorough review and amendment of the Law on PPP is required urgently.
- Guidelines and best practice negotiation should be open for project contracts in each specific sector, which should be devised with the goal being a bankable solution for BOT project development.

Tendering

- In addition to open bidding process which has not been successful under the Law on PPP and the Law on Investment, legal frameworks and policies should be allowed for competitive bidding process on selection of investors for PPP and non-PPP projects based on investors' capabilities.

PPAs

- Development of new PPA templates for the LNG and Offshore Wind sectors with risk allocation provisions acceptable to lenders in international project financing transactions.

Renewables

- Clarification on the site survey application process for offshore wind projects following Report 126/BC-BTNMT dated 4 October 2022 of the Ministry of Natural Resources and the Environment.
- Devising national marine spatial planning in conjunction with the development of regional power centers.
- Reviewing the basis on which sea area allocation decisions are allocated under Decree 11/2021/ND-CP in order that sea use levies are commensurate with the development and operational costs of offshore wind and gas to power projects.

Grid

- Progression of legal and regulatory reform to enable private sector investment into grid infrastructure.

Future development

- Development of a national agency and a national training program to support the development of large-scale clean energy and infrastructure projects with a view to Vietnam becoming a regional and world leader in the sector, exporting skills and clean energy globally.

CONSOLIDATED COMMENTS ON TAX & CUSTOMS RELATED ISSUES

No.	Issue	Recommendations
I.	**Issues about VAT, CIT, contractor tax, invoices**	
1	**CIT incentives for adding new business lines/products without capital increase** Recently, many enterprises implement investment projects in encouraged locations and enjoy CIT incentives for incomes arising from business activities in such locations. After that, procedures for adding business lines/products are carried out without increasing capital because the enterprise utilizes available resources of the existing project such as machinery and equipment, factories, labor or uses the remaining capital of the initial project to invest in factories, machinery and equipment for additional business lines and products. These additional activities support/align with the operational goals of the existing project. However, through working with tax authorities at all levels (Ministry of Finance, General Department of Taxation, Local Tax Department), tax authorities are having opinion that income arising from such additional business lines/products are not eligible for CIT incentives applied to encouraged locations for the remaining incentive period of the project because no separate investment project is registered for these activities. Further, despite of additional lines/products, the project's capital is not increased. In our opinion, the tax authority's argument above is not really consistent with the objectives of the current CIT incentive policy and has not considered the nature of additional business lines/products in specific situations for appropriate guidance.	According to the Law on Investment and its guiding documents, there is no specific regulation on whether an enterprise must register for capital increase to establish a new investment project or expansion project when new business line/product are added to the initial project. In addition, CIT Law also stipulates if any change in business registration certificate or investment certificate of an existing enterprise does not affect their tax incentive eligibility as prescribed, then the enterprise will continue to enjoy tax incentives for the remaining time or incentives under the expanded investment category if they are eligible for incentives as prescribed. Furthermore, in case an enterprise satisfies the incentive eligibility for encouraged location, the income eligible for CIT incentives is the entire income arising from business activities in the encouraged location. In fact, it is extremely common and encouraging for enterprises to flexibly change and add new lines or products to adapt to the situation and market needs and improve business efficiency. Normally, enterprises carry out additional business activities through 02 cases: (i) Increasing investment capital to build more factories, purchase machinery and equipment for new business lines/products (ii) Using existing resources of an on-going investment project to finance additional activities/products without capital increase. For case (i), we understand that the enterprise carries out an expansion investment project and is eligible to tax

No.	Issue	Recommendations
		incentives under the conditions of the expansion investment project. For case (ii), we believe that income arising from these additional activities should also be entitled to incentives applied to the ongoing project for the remaining time for the following reasons: ✓ Additional business lines/products using resources from the capital of the ongoing project and aligning with the project's objectives ✓ Business activities from additional business lines/products are carried out in encouraged location ✓ Limiting incentives to only the initially registered activities of an investment project without applying incentives for additional business lines/products within the initial capital simply follows administrative procedures without considering the fact that the addition of business lines/products does not change the project's eligibility for tax incentives based on location criteria. The application of incentives for case (ii) above is also consistent with the objective of preferential policies, encouraging business activities in the areas that need to attract investment, especially in the context enterprises which are facing capital difficulties flexibly use available resources to innovate and improve business efficiency by adding new business lines/products. That being said, we recommend that the Government and the Ministry of Finance provide specific guidance on tax policy regarding the application of tax incentives for income from additional business lines/products without capital increase by using available resources of on-going investment projects to ensure legitimate interests of

No.	Issue	Recommendations
		enterprises and avoid negative impact on the investment environment.
2	**Global minimum tax policy under Pillar 2 of the Base Erosion and Profit Shifting (BEPS) Program** In early October 2021, 136 member countries of the Joint Cooperation Forum of the Organization for Economic Co-operation and Development (OECD) (including Vietnam) adopted a Joint Statement on Base Erosion and Profit Shifting (BEPS) 2.0. Pillar 2 of this new tax policy introduced a solution on the Global Minimum Tax Rate, which applies the minimum tax rate of 15% to multinational companies in case they are enjoying a lower or zero tax rate for their income. When this policy is expected to be applied in 2024, multinational companies that have invested in Vietnam may have to pay additional taxes in other countries regarding the activities of their subsidiaries in Vietnam. At that time, Vietnam's preferential corporate income tax policy will be no longer significant. In addition, the Politburo's Resolution No. 50-NQ/TW dated August 20, 2019 provided a guiding view that prioritizes projects with advanced, new, high and/or clean technology and set an important task of building outstanding institutions and preferential policies and international competitiveness to create favorable business conditions to attract large, national key and/or high-tech projects.	As VBF recommended in Official Letter No. VBF15122022 dated December 15, 2022 to the Prime Minister, amidst such context, in order to deal with the disadvantages of Pillar 2 and continue to attract large corporations and high-tech projects in accordance with the spirit of Resolution No. 50-NQ/TW, the Vietnamese Government/Ministry of Finance needs to: • consider applying solutions to promote the legalization of the global minimum tax rate in Vietnam; and • have plans to support affected foreign businesses and investors.
3	**Cost of supporting sub-distributors in the distribution channel** Currently, it is not easy to recognize expenses for supporting secondary and tertiary distributors by manufacturers or importers and distributors since some local tax departments do not allow deduction of this kind of expense for the reason that these expenses are not considered to serve business activities of the enterprise because the sub-distributors do not directly purchase goods from the enterprise. We believe that the tax treatment in this case by some local tax departments is unreasonable, ignoring the true nature of the actual expenses of the enterprises. This expense is actually closely related to the enterprise's business activities, contributing to the enterprise's sales volume to the primary distributors and the entire distribution channel. Therefore, this expense should be deductible for taxes. Details are as follows: For manufacturers or distributors, distribution of products to end users needs a diverse distribution channel, which includes not only primary distributors but also secondary or tertiary distributors or retail stores. The model is as follows:	We respectfully request the Ministry of Finance/General Department of Taxation to consider this issue and provide consistent guidance to local tax authorities and enterprises on CIT deductibility of this kind of expense based on its purpose of serving business activities.

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	 Although secondary or tertiary distributors or retailers (collectively referred to as "sub-distributor") do not sign contracts to purchase goods directly from enterprises, rather than from authorized distributors, but the amount of goods sold by these sub-distributors and retailers is very important to promote the circulation of goods and increase sales for the enterprises. Therefore, to effectively increase sales on each distribution channel as well as to promote sales to consumers through its distributor system in each distribution channel, in addition to supporting its primary distributors who make direct purchase (such as trade discounts, sales bonuses), enterprises often carry out many sales promotion activities to increase sales of sub-distributors, for example: • Implement promotional programs or support sub-distributors in money or in kind provided that sub-distributors carry out sales promotion activities such as: marketing through sales staff, promoting the display and promotion of its products, performing advertisements such as displaying boards, logos or organizing advertising and marketing activities. • Provide rewards or support sub-distributors in cash or in kind when they achieve input sales targets from superior distributors or output sales targets to sub-distributors or consumers; or when sub-distributors buy product combos from the superior distributors; or when sub-distributors perform promotional programs to promote sales for the company. • Provide rewards or support sales/installation staff of the sub-distributors for the sales or installation of the company's products, provide monetary support to sub-distributors to carry out sales contests for staff.	

No.	Issue	Recommendations
	• Provide monetary support for sub-distributors to promote sales of long-term inventory or inventory which has arrived the end of the product cycle. These supports help sub-distributors to carry out promotion programs to promote sales of long-term inventory to distribution channels and consumers. • Other supports to sub-distributors aim to promoting the company's sales throughout the distribution channel. All the above-mentioned sub-distributor support activities actually play a material and direct role in effectively promoting sales activities and sales volume of the company (manufacturer/distributor). In many such cases, the enterprise often works closely with the primary distributor in reviewing the eligibility, cooperating to implement the program on each distribution channel and may authorize payment of support to sub-distributors through the primary distributor. Enterprises will normally keep the following documents: • Support/bonus agreement directly signed with the sub-distributors which clearly specifies the content and criteria of support and payment method. • If these supports require the close cooperation of the primary distributor, the enterprise may have a tri-party agreement (enterprise - primary distributor - sub-distributor) specifying the support measures for sub-distributors and payment method. • In some cases, the primary distributor plays an important role in the implementation of the enterprise's support programs on its distribution channel, acting as a focal point to receive support payments from the enterprise on behalf of its sub-distributors. Therefore, the enterprise will: ✓ sign an agreement to support sub-distributors of the primary distributor, with specific terms and conditions, payment methods between the parties. ✓ notify all sub-distributors participating in the support program with specific terms as specified in the support agreement signed with the primary distributor; clearly specify that the supports will be provided through the primary distributor. • VAT invoice (in case of conditional support for sub-distributors to perform services); receipts, payment documents as prescribed. VBF used to raise this issue with the Ministry of Finance in a dialogue a few years ago and received the consensus from the Ministry of Finance that these expenses serve business activities, thereby deductible for income taxes.	

No.	Issue	Recommendations
	However, recently, some local tax departments have opinion that these expenses **support sub-distributors who do not buy goods directly from enterprises**, accordingly, they should not be deducted when calculating CIT, even though the enterprises fully provide relevant supporting documents. In our opinion, this viewpoint is a quite inflexible, ignoring the nature of the expenses and the pervasive principle of the CIT law. These expenses are actually closely related to the enterprise's business activities, contributing to increase its sales. Sub-distributors (level 2, level 3.. retailers) play an important and indispensable role in the distribution system of an enterprise. If these expenses are deemed not directly related to the business activities of the manufacturer and therefore are not recognized as expenses deductible for the manufacturer's CIT calculation, then it (i) goes against international practices and (ii) creates many difficulties for manufacturers during its operations. International experiences show global trend is business development should be based on a value chain system, thus business activities will have a close connection and interdependence from design, raw material procurement, to multi-level production and distribution before coming to end users. Therefore, the costs incurred to build distribution channels are a practical and unavoidable issue in the business development of any company.	
4	**Costs shared by industrial park development companies to implement Nam Dinh Vu sea dyke project to break waves and protect the industrial park from natural disasters, storms and floods should be recognized as CIT deductible expenses, rather than government funding.** Nam Dinh Vu sea dyke is an essential infrastructure project, directly serving business activities of industrial park development companies to protect property and human life in the Industrial Park and ensure generating revenues for the Industrial Park Development Company by satisfying conditions for attracting domestic and foreign investors to carry out business activities in the industrial park, specifically: • The sea dyke enhances resilience to natural disasters and climate change, and reduces the negative effects of sea water during the IP's operations. • It is an essential condition and infrastructure to attract domestic and foreign investors to carry out business activities in the industrial park.	This is an essential expense of industrial park development companies since it directly serves business activities and generates revenue for them. Accordingly, the project value after finalization and certification by related parties in proportion to the shared costs of industrial park development companies with local authorities should be recognized as their deductible expenses.

No.	Issue	Recommendations
	• It also protects human life, infrastructures and all factories, warehouses, machinery, equipment, ... in the park from natural disasters.	
5	**Taxpayers' non-compliance with laws other than tax law (if any) cannot be a criterion for assessing deductible expenses for CIT purposes** 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 CIT law only stipulates 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, as amended (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	In the Prime Minister's Decision No. 508/QD-TTG dated April 23, 2022 approving the tax reform strategy to 2023, one of the reform objectives is to "**minimize the integration of social policies in tax law** and policies on tax exemption and reduction, **ensuring tax neutrality**, towards a consistent tax system with a sustainable structure, ensuring reasonable mobilization of resources for the state budget, and contribute **to creating a favorable and fair investment and business environment, encouraging investment, promoting competition, and reasonably regulating income**." In line with the above point of view and objective, we recommend that the Ministry of Finance considers clarifying and directing tax authorities to clearly legislate deductible expenses as follows: (i) Where revenues and expenses arise from activities prohibited by laws: expenses are not deductible. According to the Law on Enterprise,[1] enterprises are banned from doing business in banned business lines. Therefore, any expenses related to these activities shall not be considered "related to the enterprise's business activities", because the enterprise is not allowed to carry out such business from the beginning. Banned business lines. Therefore, it is reasonable to consider the expenses related to the aforementioned business activities non-deductible expenses. (ii) In case revenue and expenses arise from activities that are not prohibited by laws, but ***before or after*** performing these activities, enterprises must carry out certain procedures with competent authorities, which,

[1] Clause 1, Article 7, Clause 6, Article 16 of the Law on Enterprises 2020.

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	assessing compliance with non-tax regulations. 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. - Unfair implementation: (i) It is too broad to require that costs related to any transaction/business will be considered deductible expenses only when enterprises comply with all legal regulations related to that transaction/business. In many cases, the obligations that enterprises must fulfill under specialized laws are only for statistical purposes, rather than deciding whether the enterprises can perform such transaction/business. In other words, failure or non-compliance with this type of obligations does not affect the legality, validity and nature of the transaction/business. (ii) In some cases, it is very complicated to determine whether a transaction/business has complied with specialized laws, requiring opinion of a specialized management agency or a competent court. Therefore, it is not reasonable to assign tax officers the power to determine whether a transaction/business has fully complied with specialized laws. 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 judgment 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 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 enterprises.	in fact, have not been completed yet: expenses are still deductible if eligibility is met according to the tax law. According to the Civil Code, any transactions related to these activities are still valid for the parties involved in accordance with the legal regulations (ie the seller and the buyer are still obliged to fully complete their commitments in the contract), and is considered invalid only when declared so in a judgment by a competent court. Or in case revenue and expenses arise from activities that are not prohibited by laws, but ***after*** performing these activities, enterprises must carry out certain procedures with competent authorities, which, in fact, have not been completed yet: expenses are deductible if eligibility is met according to the tax law. The reason is that any transactions generating revenue and expenses of an enterprise, once established, **are still valid for the parties involved** even though the enterprise has not fully fulfilled its compliance obligations until declared invalid by a judgment of a competent court. For any transactions that violate the prohibition of laws, although such transactions are not implicitly violated according to the Civil Code, the determination of the prohibitions of law is quite clear in practice. In fact, in the course of operation, enterprises may violate compliance obligations with many specialized regulations (which are not prohibition of law). Therefore, in order to ensure tax neutrality, avoid using tax law for regulating behavior for non-tax regulations, except when the tax law has specific and purposeful provisions**, tax authorities should only exclude tax deductible expenses based on tax regulations**. Accordingly, the following common transactions/situations belong to groups (ii) and (iii) and should be tax-deductible: • Overtime costs exceeding 300 hours/year

No.	Issue	Recommendations
		• Costs incurred for experts before obtaining a work permit • Promotional expenses of any promotion program which is not notified or timely notified to the Industry and Trade Department • Expenses related to any transactions of exercising the right to import, export and distribute for which respective business activities have not been registered • etc.
6	**Deduction of overtime costs exceeding 300 hours/year** Regarding overtime issue, the Labor Code currently stipulates maximum number of overtime hours of an employee is 200 hours/year or, in some special cases, 300 hours/year. In fact, due to unexpected demand of customers and request of employees, some employees work more than 300 overtime hours a year and get overtime pay from their employer based on the actual number of overtime hours. The above-mentioned overtime hours come from the employees' desire to increase their income to improve social security, and the employer voluntarily pays overtime cost to the employee due to their inability to arrange other workers. According to the Law on CIT, any expenses which serve the enterprises' business activities will be tax deductible, provided that sufficient invoices and documents are given as prescribed and exclusion cases are not applied as prescribed in the Circular. The Circular also does not stipulate that cost for overtime hours exceeding the threshold are not tax deductible, and according to specialized laws and any violations of those specialized laws will be subject to sanctions of those specialized laws. In the legal documents on corporate income tax, it also stipulates that fines for administrative violations and penalties for violations of the law are not tax deductible, but does not mention the exclusion of those expenses themselves. Thus, since the overtime costs directly serve business activities of the enterprise, provided that sufficient payment documents related to the number of overtime hours are given and exclusion cases are not applied as prescribed in the Circular guiding CIT, enterprises should be eligible for deducting all salary expenses when calculating CIT.	In considering the principles of tax law, these expenses are related to the generation of revenue for the enterprise, evidenced by reasonable and clear documents, paid based on an agreement between the enterprise and its employees, and for which PIT has been fully declared and paid. Furthermore, we understand that overtime pay should be considered an encouraging benefit for employees as specified in Point 1, Article 4, Labor Code 2019 (including cases exceeding 200 hours or 300 hours per year). Therefore, these costs should be tax deductible to encourage enterprises to proactively arranging their resources to serve business purposes. Therefore, we would like to request the Ministry of Finance/General Department of Taxation to consider and quickly provide consistent guidance on this issue as above recommended.

No.	Issue	Recommendations
	However, in fact, some local tax authorities are not deducting the cost of overtime hours exceeding 300 hours for the purpose of calculating CIT. This causes disadvantages and discourages enterprises in their efforts to find orders to increase revenue and overcome difficulties, especially in the context of the prolonged Covid pandemic.	
7	**CIT declarations for capital transfer** According to Clause 1, Article 14 of Circular 78/2014/TT-BTC on capital transfer by the Ministry of Finance, it is guided that: *"...In case an enterprise sells an entire single-member limited liability company of which it is the owner in the form of a transfer of capital together with real estate, it shall declare and pay CIT for real estate transfer... "* According to Article 16 of Circular 151/2014/TT-BTC amending and supplementing Article 12 of Circular 156/2013/TT-BTC ("amended Circular 156") on CIT declarations for capital transfer, the Ministry of Finance provides guidance on tax declaration and payment on a case-by-case basis in 02 specific scenarios using different forms, including: (i) In case an enterprise sells a single-member limited liability company of which it is the owner in the form of a transfer of capital together with real estate: Declaration should be made using form 06/TNDN and annual financial close should be conducted where the its headquarter is situated *(Clause 7a, Article 12 of the amended Circular 156)* (ii) Any foreign organization that does business in Vietnam or earns income in Vietnam (hereinafter referred to as foreign contractor) without being governed by the Law on Investment and the Law on Enterprises and performs capital transfer shall: have CIT declared on a case-by-case basis, using Form 05/TNDN (*Clause 7a, Article 12 of the amended Circular 156)* *(These forms of declaration are later specified in Circular 80/2021/TT-BTC replacing Circular 156/2013/TT-BTC)* In fact, there have been cases where a foreign contractor sells all of its contributed capital in an enterprise that is a single-member limited liability company (that has land use rights certificates as fixed assets) to other organizations and/or individuals. In such a case, the foreign contractor, in line with Clause 7b, Article 12 of the amended Circular 156 as above, should have CIT declared on a case-by-case basis using Form 05/TNDN (applicable to foreign contractors that are not governed by the Law on Investment and Law on Enterprises and perform capital transfer).	By our assessment, the current regulations on cases where *"an enterprise sells an entire single-member limited liability company of which it is the owner in the form of a transfer of capital together with real estate"* are unclear in the following aspects: (i) There is no specific and legal definition of *"transfer of capital together with real estate"*. (ii) There are no specific regulations on the proportion of real estate value in the total assets of a Company in which an enterprise invests capital as a basis for determining "transfer of capital together with real estate", nor are there any regulations requiring it to file declarations for real estate transfer. The reason is that the capital transfer price is determined based on the value of the Company, taking into account the value of all assets including real estate and other non-real estate assets and liabilities. (iii) There are no specific regulations if this is applicable to foreign contractors? After reviewing Circular 78/2014/TT-BTC and the amended Circular 156, we understand that, in principle, the above provisions only apply in the following cases: (i) The transferor of the contributed capital is an enterprise established and operating in Vietnam in line with the Law on Enterprises and the Law on Investment, as the enterprise is required to file tax declaration and payment on a case-by-case basis using Form 06/TNDN and annual financial close

No.	Issue	Recommendations
	However, the tax authorities would instruct the enterprise to file declarations using Form 06/TNDN, requiring the foreign contractor to comply with Clause 7a, Article 12 of the amended Circular 156 (having CIT declared for real estate transfer). Due to the different understanding between enterprises and tax authorities in the application of Circular 151/2014/TT-BTC to the above-mentioned capital transfer activities and given inadequate instructions from the tax authorities, enterprises have been facing difficulties in tax declaration and subsequent administrative procedures. This clearly affects the business environment in Vietnam.	should be conducted where the its headquarter is situated (ii) The company in which an enterprise invests capital and whose assets are mainly real estate Accordingly, where a foreign contractor transfers all of its contributed capital in a single-member limited liability company where the contractor invests capital, we believe that the contractor should have CIT declared on a case-by-case basis using Form No. 05/TNDN – CIT declaration for capital transfer because: (i) Clause 7b of the amended Circular 156 has specific obligations and procedures for tax declaration and payment for capital transfer by foreign contractors not governed by the Law on Investment and the Law on Enterprises (declarations using Form 05/TNDN) (ii) The transfer price of contributed capital as agreed upon between the foreign contractor and the purchaser and based on the value of the company where the contractor invests the capital is determined based on different factors including the value of real estate assets, non-real estate assets (cash, fixed assets, receivables, etc.) and liabilities. Therefore, having CIT declared for real estate transfer is not suitable with capital transfer transactions. Therefore, it is recommended that the Ministry of Finance and the General Department of Taxation review our comments as presented above, provide specific and consistent guidance to local tax departments on this issue to soon address business difficulties.

No.	Issue	Recommendations
8	**Issue of Binh Duong Private General Hospital Joint Stock Company (affiliated to Hoan My Medical Corporation)** Issues with defining late payment penalty of CIT declared and additionally paid according to Circular 71/2021/TT-BTC dated August 17, 2021 (Circular 71) • Article 24, Circular 151/2014/TT-BTC dated October 10, 2014 of the Ministry of Finance and Section I, Resolution No. 63/NQ-CP dated August 25, 2014 of the Government have provisions on temporarily delaying the retrospective collection of corporate income tax arrears from the establishments applying socialization of investment but not yet meeting the detailed list of types, scale and standard criteria prescribed by the Prime Minister until new guidelines are issued by the competent state agency. • On August 17, 2021, the Ministry of Finance issued Circular 71/2021/TT-BTC guiding the CIT arrears for establishments applying socialization of investment and having CIT arrears not yet retrospectively collected under Resolution No. 63/NQ-CP. Specifically, from the day following the effective date of this Circular (i.e. November 02, 2021), if the establishments applying socialization of investment have not yet paid the CIT amount temporarily delayed, it must pay late payment penalty calculated on the unpaid tax amount and be sanctioned for tax violations (if any). • Accordingly, we understand that our Hospital will not be charged with late payment of CIT for the period prior to the effective date of Circular 71 if the additional CIT arising under Circular 71 has been declared and paid. Late payment penalty of CIT will only accrue **from the day following the effective date of Circular 71 (i.e. November 02, 2021).** • Our hospital has also reported this issue to the General Department of Taxation (through 4 official letters), however, all 4 responses from the General Department of Taxation referred our hospital to contact Binh Duong Tax Department for answers and instructions as per regulations. • However, according to the instructions of Binh Duong Tax Department, this late payment penalty shall accrue **from the day following the last day of the CIT payment deadline of the tax period with errors or omissions**. • Such application of late payment penalty by local tax authorities is unreasonable and inconsistent with the provisions of Circular 71.	To comply with the provisions of tax law without affecting the legitimate rights and interests of businesses, we suggest the General Department of Taxation review this case and provide guidance on how to calculate the late payment penalty of CIT which has been declared and paid in accordance with Circular 71, more specifically, from the day following the effective date of Circular 71 (i.e. November 02, 2021).
9	**Pain points with issuing invoices for enterprises selling goods/providing services in large quantities**	**For goods trading activities:** With large-scale production and deliveries made in large quantities regularly in one day at many different locations

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	According to the provisions of Clause 4, Article 9 of Decree 123/2020/ND-CP, only a few business lines and service provision areas are allowed to issue invoices according to the verification period between the Company and the customer: *a) In cases where a service is provided regularly and in large quantities, and needs time for checking and verifying figures between the service provider and its clients/partners such as air transport support services, supply of aviation fuel to airlines, supply of electricity (except the case prescribed in Point h of this Clause), supply of water, television services, postal and delivery services (including agency services, cash collection and payment services), telecommunications services (including value-added telecommunications services), logistics services, IT services (except the case prescribed in Point b of this Clause) which are periodically provided, invoices shall be issued upon completion of figures checking and verification between the parties but no later than the 07th of the month following the month in which the service is provided or within 07 days after the end of a cycle. This cycle shall be agreed upon between the service provider and the buyer."* In fact, in addition to the above business lines and areas, there are still many enterprises selling goods/providing services regularly in large quantities in a day at many different locations, such as petrol/oil companies or industrial catering service enterprises which are facing problems related to the invoicing time. The issue of invoices when the service provision ends (daily or for each transaction) has caused huge administrative burdens for enterprises and in many cases, such invoicing is almost impossible. In particular, the companies which supply gasoline to distributors have to deliver gasoline to each sub-distributors in various provinces and cities as per the agreement. Because of large number of sub-distributors, which are located in many provinces and cities, the verification and invoice issuance for each transaction leads to huge administrative burdens, affecting the enterprise's business operations. Similarly, enterprises that provide services regularly in large quantities also face the same issue. In particular, for an industrial catering enterprise, the supply of meals takes place continuously with 3-4 shifts per day including dinner and night shifts, therefore, it is difficult to close the data to issue invoices daily, even impossible as mentioned by the enterprise. As far as we know, previously many enterprises were allowed to issue combined invoices on a weekly/monthly basis while **still ensuring the determination and fulfillment of tax obligations in the month as prescribed.**	across the country for the same customer, we would like to propose as follows: • When delivering goods to customers, the company makes a goods delivery cum internal transport note to serve as a basis for exporting, transporting and delivering goods. • The company compares and verifies the quantity of goods with customers on a periodical basis (weekly/monthly). Based on the actual quantity of delivery confirmed by customer on the goods delivery cum internal transport note, the list and minute of quantity verification to make a VAT invoice delivered to the customer. Invoices issued together with all goods delivery cum internal transport notes will serve as a basis to prove the quantity of goods delivered to customers. • In case the invoice is issued on a weekly basis and a week falls in two consecutive months, invoice shall be issued on the last day of the month to ensure timely calculation and declaration of VAT of that month. Sales is also properly reflected in the month of delivery to customers. Total amount of goods delivered to customer is always exactly equal to the total amount of goods invoiced in the month. **For service providers:** We would like to propose to expand the scope of application for the cases of providing services regularly and in large quantities, and needing time for verification in Clause 4, Article 9, Decree 123/2020, for example: "*a) In cases where a service is provided regularly and in large quantities, and needs time for checking and verifying figures between the service provider and its clients/partners such as air transport support services, supply of aviation fuel to airlines, supply of electricity (except the case prescribed in Point h of this Clause), supply of water,*

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		television services, postal and delivery services (including agency services, cash collection and payment services), telecommunications services (including value-added telecommunications services), logistics services, IT services (except the case prescribed in Point b of this Clause) ***and other services*** *which are periodically provided, invoices shall be issued upon completion of figures checking and verification between the parties but no later than the 07th of the month following the month in which the service is provided or within 07 days after the end of a cycle. This cycle shall be agreed upon between the service provider and the buyer."*
10	**Pain points in applying customs policies and implementing Decree No. 18/2021/ND-CP** The Government's Decree 18 has solved many pain points of export processing enterprises (EPEs) by allowing EPEs to apply the regulations applicable to EPEs once investment registration certificate ("IRC") is granted and also allowing refund of tax overpaid at the import stage for imported goods and paid during the period when Decree 18 has not yet taken effect. Decree 18 is very important and creates conditions for EPEs to apply the regulations applicable to EPEs once IRC is granted, therefore, enterprises believe that there should be no different treatments in EPE regulations applied for imported goods and goods purchased from domestic suppliers. In fact, when purchasing equipment and goods from domestic suppliers for building factories during the period when Decree 18 had not yet come into force, although EPE regulations have been applied, EPEs cannot make customs declaration because at the time of domestic purchase, Decree 18 had not taken effect. Therefore, EPEs wishes to complete their customs declaration dossier to comply with the current regulations on tax and customs for the purchase of domestic goods/equipment. However, because Decree 18 does not have specific provisions for the supplement of customs declaration or equivalent documents for domestic purchase during the period when Decree 18 has not been promulgated, EPEs are still experiencing pain points in completing customs dossiers for this case.	In order to complete customs dossiers for domestic purchase, EPEs would like to request the Ministry of Finance/General Department of Customs to consider the nature of the transaction (domestic purchase to serve business activities of EPEs), facilitating the consistent application of EPE regulations for both imported goods and domestically purchased goods to help solve pain points for EPEs by: • Allowing EPEs to make additional customs declarations in case they had purchased equipment and machinery before Decree 18 was issued and the customs declaration had not been made; or • In case additional customs declaration cannot be made, EPEs respectfully requests the Ministry of Finance to allow customs authority to certify the list of domestic purchased goods and equipment by EPEs during the civil construction phase before Decree 18 was promulgated but customs declaration had not been made. This certified list will replace the customs declaration to help EPEs complete the customs dossier for tax purposes; or

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		• 0% VAT rate is applied on purchase invoices without having to go through (i) or (ii).
11	**VAT treatment for exported services** Currently, there are many companies operating in technical analysis and testing, including analysis and quality testing services of domestically produced goods before being exported to foreign countries. These companies directly provide services to customers abroad, their services are attached to products that will be exported and consumed in foreign markets. The Ministry of Finance issued Official Letter No. 15458/BTC-CST dated October 27, 2014 in response to Prominent (Vietnam) Company Limited, and Official Letter No. 7156/BTC-CST dated June 18, 2018 in response to Nike Inc. Accordingly, quality testing service for goods before export is subject to 0% VAT. However, in practice, local tax departments still have different treatments, and do not accept 0% VAT for quality testing services for goods before export. This is the case of FITI Testing & Research Institute Vietnam Co., Ltd ("FITI Vietnam Company") and Tax Department of Long An province. This issue has been repeatedly proposed to the local Tax Department, General Department of Taxation and the Ministry of Finance, but there is still no satisfactory guidance.	There is no change or update to relevant regulations, specifically Decree 209/2013/ND-CP dated December 18, 2013 of the Government and Circular 219/2013/TT-BTC dated December 31, 2013. 2013 of the Ministry of Finance. Therefore, the application of 0% VAT for quality testing services before export is fully compliant with current regulations. We, as representatives of Korean enterprises in Vietnam, express our concerns that the different applications of this regulation will affect the Korean investor community, as well as other foreign investors who want to make further investments or new investments in Vietnam. We would like to propose to the Ministry of Finance/General Department of Taxation to make a fair, reasonable and satisfactory treatment to Korean investors, such as FITI (Vietnam) Company Limited.
12	**Issue with VAT refund of investment projects, which are in the investment phase and have the input VAT amount used for investment that has not been deducted from 300 million dong or more** According to the VAT Law and its guiding documents, in case an enterprise has an investment project that is in the investment phase, the input VAT amount on goods and services used for investment which has not been deducted for CIT calculation and the remaining tax amount is 300 million dong or higher, then the input VAT of the investment phase will be refunded. In fact, after investment phase ends, many enterprises have not declared the VAT to be refunded because they have to prepare for the operation phase. Therefore, they still keep track of VAT refund amount in the investment phase on Form No. 02/GTGT for investment projects, and at the same time declare, withhold and pay VAT in the operation phase on Form No. 01/GTGT. After	Basically, we understand that the refund policy for input VAT incurred during the investment phase aims to help enterprises have more fundings to (i) facilitate upcoming investment activities if the investment process prolongs; and (ii) serve business activities when they come into operation. In addition, after studying the legal regulations on VAT and law on tax administration, we also found there is no specific regulation whether when the investment phase ends and operation phase starts, enterprises need to declare *"VAT amount requested for refund"* on Form No. 02/GTGT in the period when the investment phase ends to request a refund

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	that, when operation becomes stable and they need tax refund for the input VAT amount in the investment phase, enterprises will declare in the "remaining input VAT of the investment project requested for refund" on Form No. 02/GTGT and make a request for VAT refund. In this regard, the General Department of Taxation issued Official Letter No. 944/TCT-CS dated April 1, 2021 to the Tax Departments of the provinces and centrally-run cities guiding *"In case the "remaining input VAT of the investment project requested for refund" has not been filled in VAT return form for the investment project (Form 02/GTGT) when the investment phase ends, tax return shall be made in accordance with Point b Clause 4, Article 7 of Decree No 126/2020/ND-CP"* . When following above guidance of the General Department of Taxation in Official Letter No. 944, enterprises are facing difficulties because Point b, Clause 4, Article 7 of Decree 126/2020/ND-CP only allow taxpayers to make additional return to increase the VAT amount requested for refund when the tax return of the next tax period and the tax refund application have not yet been submitted. Accordingly, there are many cases where enterprises have submitted the tax return of the next tax period while the tax refund request have not been adjusted on Form No. 02/GTGT, then the local tax authorities refuse tax refund although they are still eligible for tax refund for the input VAT amount incurred during the investment phase.	of input VAT in the investment phase at the or only make additional declaration (if "VAT amount requested for refund" has not been declared) according to Point b, Clause 4. Article 7 of Decree 126/2020/ND-CP as guided in Official Dispatch 944 of the General Department of Taxation. As mentioned, VAT refund is the right of the enterprises and they are entitled to VAT refund if prescribed conditions are met. Therefore, in order to remove the inadequacy in Official Letter 944, protect the legitimate interests of enterprises in tax refund, we propose the Ministry of Finance and the General Department of Taxation to consider and issue guidance to replace Official Letter 944 in the following direction: "Enterprises shall monitor the input VAT amount of the investment phase on Form No. 02/GTGT and be entitled to tax refund at any time, even after operation phase starts if the remaining input VAT amount of the investment project incurred before they go into operation is 300 million dong or higher. Enterprises declare in the tax refund request on Form No. 02/GTGT at the tax refund request period and submit a tax refund application to the tax authority.
13	***Issue with the application of the Double Tax Agreement for foreign suppliers*** Foreign suppliers carrying out e-commerce, digital-based business activities and other services mostly do not have a presence in Vietnam and do not have a permanent establishment in Vietnam under double tax avoidance agreements of which Vietnam is a signatory (hereinafter referred to as "Agreements"). Therefore, income generated from the above activities will have to be exempt from CIT as provided for in such Agreements. In terms of procedures, according to applicable laws, tax exemption or reduction under the Agreements is determined on a contract basis. However, e-commerce activities, marketplaces and digital platforms are characterized by having a lot of customers and suppliers, while e-contracts with customers often have the same terms and conditions.	We suggest that the Ministry of Finance/General Department of Taxation consider and quickly provide a specific guidance on the application of Double Taxation Agreement for foreign suppliers.

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	Therefore, it is advisable to consider allowing those marketplaces to apply for tax reduction/exemption by using master contracts and general terms of service for each business model instead of making application for every single transaction to reduce administrative procedures. Although the tax registration, declaration and payment system of foreign suppliers on the Portal has been in operation since early 2022, so far the tax authorities have not processed or issued any written approval for foreign supplier's application for tax exemption under the Agreements for their CIT in Vietnam.	
14	**Issue with the application of tax exemption and reduction under the Agreement to income earned from capital transfer when considering the ratio of real estate value to total capital of the enterprise** According to the provisions of Clause 4, Article 27 of Circular 205/2013/TT-BTC on the application of tax exemption and reduction under the Agreement to income earned from capital transfer when considering the ratio of real estate value to total capital of the enterprise: *"4. Tax obligations for income from the transfer of foreign investors' capital in foreign-invested enterprises, in a trust or a partnership in which the value of real estate makes up a predominant proportion in the total capital of such enterprises.* *Most of the Agreements between Vietnam and foreign countries provide that Vietnam is entitled to collect income tax in cases where the foreign parties transfer their capital in enterprises, trusts or partnerships being residents of Vietnam and the value of real estate makes up a predominant proportion in the total assets of such enterprises.* ***The ratio of real estate values to total assets of the enterprise is the simple average of the ratios of real estate values to the total assets of the enterprise at the time of property transfer, opening and closing of the tax year immediately preceding the year when the property is transferred. The real estate valuation is based on the enterprise's audited balance sheet at the above-mentioned times."*** We understand the Agreement allows tax exemptions/reductions to taxpayers if they meet the conditions on the ratio of real estate value, which can normally be evidenced by the data on the audited financial statements of the year immediately preceding and immediately following the	The requirement that an audited balance sheet should be available at the time of transfer is really troublesome for enterprises to prove their transactions are satisfactory because usually there are few independent auditors carrying out audit for "Balance Sheet", not to mention at the time of closing accounting books. Even if it is feasible, this provision along with the requirement to have an audited figure at the time of property transfer (maybe mid-year) causes unnecessary costs for taxpayers, while the ratio of real estate value to total assets as a basis for application of the Agreement will be determined as a simple average, so the property data recorded in the audited financial statements of the year immediately preceding and immediately following the transfer transaction time (which are the financial statements at closing time and published reliably) should be reliable and sufficient grounds for determining the ratio of real estate value to total assets, based on which to make assessment under the Agreement. Therefore, we really hope the policy-makers consider and make adjustment based on actual situation, minimizing administrative procedures, and facilitating taxpayers' compliance with the provisions of laws.

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	year of performing such capital transfer transaction. However, according to Circular 205, the determination of real estate value ratio must be based on **the "Audited balance sheet"** at three points of time: ***property transfer time, opening time and closing time of the tax year immediately preceding the year when the property is transferred.***	
15	Pursuant to Point b, Clause 1, Article 15 of Decree No. 218/2013/ND-CP: *"Article 15. Incentive tax rate* *1. Incentive tax rate of 10% within 15 years applied to:* *...b) Income of enterprise from performing **new investment project** in the fields: ...**production of software products**; ...* *Software production investment projects specified at this Point is the software production investment projects which belongs to the list of software products and meets the requirements of software production process as prescribed by law"* According to Clause 3, Article 10, Circular 96/2015/TT-BTC: *"a) New investment projects entitled to corporate income tax incentives specified in Articles 15 and 16 of Decree No. 218/2013/ND-CP are:* *……..* *New investment projects entitled to enterprise income tax incentives as prescribed must be granted investment licenses or investment certificates by competent state agencies or permitted to invest in accordance with the investment law."* According to Vietnam commitments in the WTO stipulating the field that foreign investors are allowed to do business, only the software service industry is mentioned as below: *"Section 84: Computer services and related services* *841. Consulting services related to computer hardware installation* *842. Software implementation services* *All services include consulting, software development and implementation services. The term "software" can be defined as the set of instructions necessary to make computers work and communicate with each other. Various programs can be developed to cater for specific applications (application software), and customers can choose to use ready-to-use software (package software), develop specific software according to special requirements (customer-required software) or a combination of both.* *84210. System consulting and software consulting services* *84220. System analysis service* *84230. System design service*	We propose that there should be consistency in wording or definition among legal regulations to avoid the misunderstanding and different treatments among tax authorities.

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	84240. Programming Service *84250. System maintenance service* *843. Data processing services* *844. Database Services* *845 Maintenance service of office machinery and equipment, including computer* *849. Other computer services."* Under tax regulations about software, only production of software products is subject to tax incentives providing that the investment registration certifiate specifying the business line is granted for new investment project. As stipulated in the WTO commitments, although only computer-related services are mentioned, such services, in nature, might be understood as software production based on the definition and description (i.e: software implementation service). However, in fact, the wording difference in tax legal framework and WTO commitments will lead to different interpretation of local tax authority, some of whom might challenge that software implementation service could not be treated as software production but normal software service.	
16	Pursuant to Clause 3, Article 10 of Circular No. 96/2015/TT-BTC: "*With regard to new investment projects:* *a) New investment projects that are given CIT incentives prescribed in Article 15 and Article 16 of Decree No. 218/2013/ND-CP include:* *- The project is granted the Investment Certificate for the first time from 1st January 2014 and generates revenue from that project after being granted the Investment Certificate.* *- Any domestic investment project is associated with establishment of a new enterprise whose capital is below VND 15 billion, not being to the list of conditional business lines and being granted the Enterprise registration certificate from 1st January 2014.* *- Any project of investment that is independent from the project of an operating enterprise (including those whose capital is less than VND 15 billion and not belonging to the list of conditional business lines) and granted the Investment registration certificate from 1st January 2014 to execute such independent project.* *- Private notary offices established in disadvantaged areas and extremely disadvantaged areas.* *New projects of investment must be granted investment licenses or certificates of investment as prescribed by regulations of law on investment in order to be given CIT incentives."*	We propose that more specific guidance for this case should be supplemented to facilitate businesses in complying with regulations and ensure the consistency among the legal documents.

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	According to Clause 2 Article 37 Investment Law No. 61/2020/QH14 dated on 17th June 2020 by the National Assembly: *"2. Cases in which the procedures for issuance of an Investment Registration Certificate are not required include:* *Investment projects of domestic investors;.".* Based on the tax regulations, we understand that only domestic invevstment projects with its capital of less than VND 15 billion do not need to provide Investment registration certificate to enjoy tax incentives (only Enterprise registrationn certificate is needed). Therefore, it could be understood that new domestic investment projects whose capital is VND 15 billion or more must be granted with Investment Licenses or Investment Registration Certificate as prescribed by regulations of law on investment in order to be given CIT incentives. However, under investment regulations, domestic enterprises are not required to obtain Investment Registration Certificate. Accordingly, the current regulations do not provide specific guidance for new local investment project with capital of VND 15 billion or more without an investment registration certificate, whether they be entitled to CIT incentives of new investment projects or not.	
17	Pursuant to Clause 4, Article 10 of Circular No. 96/2015/TT-BTC: *"If satisfying one of the three conditions prescribed at this Point, the enterprise developing an operating investment project such as expansion of production scale, increase of capacity, innovation of production technology (hereinafter referred to as expansion projects) in incentive field or incentive area that is given CIT incentives under Decree No. 218/2013/ND-CP…* *The expansion project mentioned in this Point must satisfy one of the following criteria:* *- The increase in cost of fixed assets when the project is completed and put into operation is at least VND 20 billion (if the expansion project is of an incentive field given CIT incentives according to Decree No. 218/2013/ND-CP) or VND 10 billion (if the expansion project is located in a disadvantaged area or extremely disadvantaged area according to Decree No. 218/2013/ND-CP.* *- Ratio of increase in cost of fixed assets is at least 20% of total cost of fixed assets before investment.* *- Designed capacity after expansion increases by at least 20% compared to the designed capacity mentioned in the technical and economic feasibility study done before initial investment."*	We propose that legal framework should specify on whether any specific documents are required to prove that investment expansion has been licensed or not to apply CIT incentives to facilitate enterprises to comply with Vietnames law in term of taxes.

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	Accordingly, an enterprise having investment project and satisfying one of three conditions of expansion regarding production scale, increase of capacity, innovation of production technology shall be entitled to CIT incentive for expansion investment projects. However, the current regulations do not regulate the requirement of supporting documents to serve the tax incentive application (i.e: investment license for expansion project must be obtained, etc.), which leads to arguments in practices. More specifically, some tax authorities required business entities to provide invevstment certificate for expansion projects, which is not agreeable with business entities due to their understanding that the licensing violations/non-compliance will be subject to the penalty of licensing authority and there should be no impact on application of CIT incentive.	
18	Pursuant to Clause 12, Article 1 of Decree No. 12/2015/ND-CP on amending Point a Clause 2 of Article 15 of Decree 218/2013/ND-CP regulating on cases of 10% CIT rate as follows: "12. Point a Clause 2 of Article 15 is amended as follows: "a) Income of enterprises from investment in education and training, vocational training, healthcare, sports, environment, judicial expertise (hereinafter referred to as PSI enterprises). The types, scales, standards of PSI enterprises shall be prescribed by the Prime Minister" According to Point b, Clause 1, Article 15, Decree 218/2013/ND-CP regulating cases being subject to CIT rate of 15% in 15 years: "b) Income of enterprise from performing new investment project in the fields: Scientific research and technological development; application of high technology in the list of hi-tech invested and developed with priority as prescribed by the high-tech Law; high-tech incubation, high-tech enterprise incubation; venture capital for high-tech development in the list of high-tech developed with priority as prescribed by high-tech law; construction investment and business of high-tech incubator, high-tech enterprise incubator; investment and development of water plants, power plants, water drainage and supply system, bridges, roadway, railway, airports, seaports, river ports, railway stations and extremely significant infrastructure that shall be decided by the Prime Minister; production of software products; production of composite materials, light building materials, rare materials, production of renewable energy, clean energy, energy from waste destruction and biotechnology development." Pursuant to Section 8, Part VI of the List of amendments and supplements to a number of contents of the list of types, criteria for scale and standards of establishments implementing socialization	We propose that more specific guidance should be provided to facilitate the business entities.

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	in the field of vocational education and training , health, culture, sport and environment, issued together with the Prime Minister's Decision No. 1466/QD-TTG dated 10 October 2008 (Issued together with Decision No. 693/QD-TTg dated 6 May 2013 of the Prime Minister) stipulating the list of types, criteria and standards of establishments implementing socialization in the environmental field of renewable energy production facilities from wind power, solar light. solar, tidal, geothermal, energy, biological, clean energy production from the destruction of environmental pollution wastes on 4 aspects: scale, staff standards, land supply needs and requirements for facilities, capacity and technology of the establishment. In which: - Requirements for land supply demand are as follows: + It must be based on the current land use status and the local establishment's planning and development plans. + It must be determined specifically for each project under its management and must be reported to the People's Committee of the same level (through the Natural Resources and Environment agency) and the management agency of the direct managing superior. - Requirements on facilities, capacity and technology of the establishment are as follows: + Satisfy investment conditions as prescribed by law; technology capacity registered and approved by competent authorities and having financial capacity; + Make an environmental impact assessment report or a commitment to environmental protection according to regulations; + Has been put into operation, certified by a competent authority to meet national technical regulations and local technical regulations. Based on the above regulations, enterprises implementing new investment projects in the field of renewable energy such as wind power, solar power, tidal power, garbage power... can apply one of two types of incentives : preferential tax rate for 15 years or preferential tax rate for all incomes from renewable energy projects if being considered as socialization activities in the environmental field. However, the criteria for determining the bases for implementing socialization in the environmental field for enterprises in the renewable energy sector are quite general, leading to the fact that enterprises could not be able to determine if they are qualified. Specifically, which document to prove that the enterprise has been granted land based on the current land use status and the local establishment's planning and development plan? Which documents to prove that the enterprise has met the registered and approved technological capacity by the competent authority in the field of renewable energy? Which documents to prove that the enterprise has been certified	

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	by a competent authority to meet national technical regulations or local technical regulations? Is an Electricity Operation License an appropriate proof?. Currently, many businesses have asked tax officials about this issue but due to the lack of specific instructions, the answers of the tax authorities are that all businesses should self-determine based on current regulations to apply.	
19	Pursuant to Clause 2c, Article 138 of the Law on Tax Administration No. 38/2019/QH14: *"c) A fine of 20% on the understated declaration of tax payable amount or the increased tax amount in the case of tax exemption, reduction, refund or non-collection, for the acts specified in Clause 1 and Point b, c Clause 2 Article 142 of this Law"* Based on the legal provisions, we understand that enterprise is subject to administrative fines of 20% on the understated declaration of tax payable amount even though the enterprise already fulfilled tax payment obligation before tax auditor come. In fact, some enterprises under this circumstance have no intention of tax fraud because all tax obligations incurred have been paid into the state budget. In addition, the purpose of promulgating tax administration laws is to create sanctions for businesses that deliberately evade taxes. Therefore, the regulation of imposing a penalty of 20% on the declaration for enterprise mentioned above will cause disadvantages to the enterprise.	We propose that the General Department of Taxation should consider eliminating or decreasing penalty of 20% on the understated declaration of tax payable amount or the increased tax amount for enterprises who are fulfilling obligations but declared inaccurately.
20	According to Clause 2, Article 9, Decree No. 123/2020/ND-CP: *"Invoices for provision of services shall be issued upon completion of the provision of services, whether the payment of the invoiced amount is made or not. In case a service is provided with payments collected in advanced or during the provision of that service, an invoice shall be issued when each payment is collected."* Pursuant to Article 24, Decree No. 125/2020/ND-CP*:* *"Penalties for violations against regulations on issuance of invoices upon sale of goods or provision of services, the act of issuing invoices at the wrong time will be fined from VND 4 million to VND 8 million"* We observed that the current regulations cause difficulties for business entities to comply the timing requirement of invoice issuance, especially for service business. More specifically, business entities providing services are required to issue VAT invoice upon the payment receipt or service completion, whichever is sooner. However, the payment might be received at the end of the day, which will be followed by notice from commercial bank regarding the completion of the transaction. Accordingly, it will be impossible for enterprises to ensure that invoices are issued within that day, leading to admin penalty for the act of invoice issuance at incorrect timing. In	We propose the General Department of Taxation to consider stipulating that force majeure cases are excluded when applying sanctions for cases where there is evidence that the payment of service fees takes place at the end of the day as above, for example, it can be taken as follows: a specific timeline such as no penalty for late invoicing with service fee payments after 4pm daily. This is necessary and reasonable to create favorable conditions for businesses.

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	additions, such admin penalty is counted based on each violated invoice, leading to material penalty amount for enterprises.	
21	Pursuant to Circular 219/2013/TT-BTC dated 31st December 2013 of Ministry of Finance: *"4. Other cases:* *a) If the taxpayer engages in trading, processing gold, silver and gemstones, the business entities must separate revenue from such activities to calculate VAT by direct method according to Article 13 of this Circular."* The current regulations do not specify the definition of products of gold, silver, and precious stones. More specifically, there is no guidance to determine appropriate tax declaration method for such products (i.e: what is the proportions of ingredients from gold and silver of a product to be considered a product of gold, silver and gems? Is a product plated with gold and silver considered a product from gold, silver, or gems or not?).	We propose that it is necessary to have the coordination from tax authority and state bank of Vietnam to provide clearer guidance.
22	Incentives in terms of expenses Currently, CIT incentive policy mostly include profit-based incentive types, meaning only when enterprises are in profitable position and generate taxable income, such enterprises could enjoy the benefits from tax incentives. Meanwhile, other direct incentive types such as cost-based incentives are not popular under Vietnam's regulations. Normally enterprises would not generate profits in the first few years of operation due to large investment expenses on infrastructure, technology, R&D, thus such enterprises need more direct incentives, e.g. supports on expenses spent on infrastructure, R&D, technology transfer, to encourage investment activities, R&D activities, as well as technology transfer in Vietnam.	It is recommended that the Government should supplement cost-based incentives (e.g. supports on expenses spent on infrastructure, R&D, technology transfer) to encourage projects in selective investment sectors, such as: - Projects with large investment capital, with significant spending on infrastructure (e.g. buildings, machineries, etc.) - Projects with significant expenses incurred on technology, R&D, such as in the fields of high-tech, R&D projects, manufacturing electric vehicles.
23	Tax incentives for projects manufacturing electric vehicle The prevailing regulations on CIT do not include the CIT incentives for projects manufacturing electrical vehicles (e.g. electric car). Currently, the electric vehicle production industry is a breakthrough industry in the world, with high economic potential and application of advanced technology. This field is and is expected to attract interest as well as large investment capital from domestic and foreign investors, leading to the development of the supply chain of raw materials and components, which potentially make an important contribution to the development of industries in Vietnam.	

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	In addition, in terms of the environment, electric vehicles make an important contribution to environmental protection by limiting emissions into the environment. This field is also very suitable for Vietnam's green development strategy as well as the implementation of COP26 commitments. Accordingly, the field of producing electric vehicles should be encouraged and enjoy high CIT incentives.	
24	CIT incentive application for high-tech sectors According to the guidance of Law 32/2013/QH13 and Decree 218/2013/ND-CP guiding CIT, the application time of CIT incentives for high-tech enterprises, agricultural enterprises applying high-tech, and projects applying high-tech are counted from the **date** of Certificate issuance. However, according to the guidance of Circular 78/2014/TT-BTC and Circular 96/2015/TT-BTC guiding CIT, the application time of CIT incentives for high-tech enterprises, agricultural enterprises applying high-tech, and projects applying high-tech are counted from the **year** of Certificate issuance. For high-tech enterprises, agricultural enterprises applying high-tech, and projects applying high-tech, the guidance on the starting time of incentive application period is not consistent among Law, Decree, and Circular guiding CIT. Especially, the guidance under Law and Decree which stipulates the application from the **date** of Certification issuance would create difficulties for enterprises to apply, as currently there is no guidance on the allocation of taxable income entitled to CIT incentives between different periods in the same year. The application of incentives from the **year** of Certificate issuance would be more supportive for enterprises to calculate and declare CIT incentives.	It is recommended that the Government should amend the regulations to have consistent guidance on the application time of CIT incentives for high-tech enterprises, agricultural enterprises applying high-tech, and projects applying high-tech from the **year** of Certificate issuance.
25	Promotion expenses not notified/registered with the Ministry of Industry and Trade/Department of Industry and Trade in accordance with the Commercial Law Enterprises when implementing promotion programs must fully prepare payment documents, give promotional gifts to customers according to regulations. However, if the promotion organization does not comply with the provisions of Point 1a, Article 16 and Article 17, Decree 81/2018/ND-CP, in addition to incurring administrative penalties in the field of trade, the	On the basis that (i) enterprises have had to pay additional output VAT when promoting in kind and subject to penalties for administrative violations in the field of

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	enterprise must also issue VAT invoices and declare output VAT for promotional goods as per current regulations. According to the provisions on expenses deducted from CIT in Article 6, Circular 96/2015/TT-BTC, although enterprises do not comply with the procedures prescribed by the law on trade, enterprises still satisfy the conditions deducted according to Point 1, Article 6, Circular 96/2015/TT-BTC and do not fall into the cases excluded from costs in Point 2, Article 6, Circular 96/2015/TT-BTC. However, currently, some tax authorities have the view that this cost is not deducted, leading to financial losses for businesses implementing promotions as well as affecting the interests of customers to be promoted.	commercial law and (ii) ensuring benefits for consumers to enjoy the promotion, we recommend clearly stipulating in the CIT law on allowing deduction of promotional expenses, including in case of non-compliance with the Commercial law as prescribed in Point 1a, Article 16, Decree 81/2018/ND-CP.
II.	**Foreign contractor tax**	
26	**Foreign contractor tax in case of supply of goods with warranty provision** According to Clause 2, Article 2, Circular 103/2014/TT-BTC dated August 6, 2014 guiding fulfillment of tax liability of foreign organizations and individuals doing business in Vietnam or earning income in Vietnam (Circular 103), foreign contractor tax is not applicable in cases where foreign organizations and individuals supply goods to Vietnamese organizations and individuals without ancillary services to be performed in Vietnam in the form of delivery at a foreign border checkpoint and delivery at a Vietnam's border checkpoint (even if goods are delivered at a foreign or Vietnamese border checkpoint with warranty provisions as the seller's responsibilities and obligations). With contracts for supply of goods without such services, according to mutual agreement between the parties and international practices, the seller may be obliged to provide guarantee for a certain period of time as specified in the contract. In the event of defective goods, a warranty should be provided in different ways, depending on the extent to which goods are damaged and mutual agreement of the parties, including: 1. The seller replaces defective goods with new ones; or 2. The seller sends their staff to Vietnam to repair defective goods; or 3. The seller hires a Vietnam-based supplier to inspect and repair defective goods; or 4. Goods are sent to the seller for repair overseas; or 5. Any combination of these. Performance of any of these means that the seller aims to perform their warranty obligations in their sales contract and according to the above provisions, this sales contract is not subject to contractor tax in Vietnam.	Traditionally, goods purchase and sale contracts normally include a warranty clause, with a certain warranty period, in order to demonstrate the seller's commitment to product quality. This warranty is understood as a mandatory part of the seller's responsibility in their goods purchase and sale contract to protect product quality and customer benefits. In fact, in order to save most of the costs needed in performing warranty obligations, for minor defects and issues that can be addressed by itself, the supplier will undertake repair to address them. In case repair is not possible, replacement will be carried out. The repair can also be carried out in Vietnam or another country, depending on the goods and its issues. Therefore, no matter if repair and replacement is required or no matter where such repair and replacement takes place, warranty is provided depending on the actual condition of the goods. The supplier's warranties, such as repair of defects, may not change the nature of the sales contract in any way, and it should not be interpreted that this is an ancillary service connected with the supply of goods and subject to foreign contractor tax. Some local tax authorities believe that the warranty provision covers replacement of damaged goods only or

No.	Issue	Recommendations
	However, in practice, some local tax authorities interpret this provision in a way that the contractor tax is not applicable in cases 1) and 4) above only. As in cases 2), 3) and 5), the contractor is considered to have provided services in Vietnam, therefore, the entire value of the relevant goods purchase and sale contract is subject to foreign contractor tax.	that repairs and replacement must be performed abroad, which, we believe, is not in line with the above regulation, nor is it suitable with the actual business activities. In order to promote a shared understanding and consistent application of rules among local tax authorities, while preventing business frustration, it is suggested that the Ministry of Finance/General Department of Taxation provide clear guidance on this issue in a way that a warranty in any form as presented earlier by foreign contractors should not be subject to the foreign contractor tax.
27	**Application of CIT rates to turnkey contracts** According to Point b.1, Clause 2, Article 13 of Circular 103: *"b.1) If a main contract or subcontract consists of various activities, the CIT rate calculated on taxable income, to determine the payable CIT amount based on taxable income generated by each business activity carried out by the foreign contractor or foreign sub-contractor, shall be specified in the contract. If the value of each business activity cannot be separated, the highest CIT rate shall apply to the whole contract value.* *With regard to construction and installation services that include procurement of materials or machinery and equipment: if the value of each business activity is separated in the main contract, the corresponding CIT rate shall apply to each of them. If the value of each business activity cannot be separated, the 2% CIT rate shall apply to the whole contract value. Where the foreign contractor signs a contract with subcontractors to commission the entirety of works or items that include procurement of materials or machinery and equipment, and the foreign contractor only provides the other services under the main contract, the CIT rate on service provision (5%) shall apply."* According to these regulations, if we interpret them correctly, for a turnkey contract that includes procurement of materials or machinery and equipment in addition to construction work, if **the value of goods purchased** is separated by the contractor, this value is subject to a fixed CIT rate of 1% on the corresponding income.	Tax and construction laws do not require a main contract to present in detail the quantity and unit price of each goods under a turnkey contract. Therefore, the above argument of local tax authorities is unreasonable and unfair to businesses. In fact, for turnkey contracts and in line with international bidding procedures, the bidding process is quite transparent, and contractors and developers invest much quality time in contract negotiation. In this process, they are also required to provide specific and detailed calculations on the category, quantity, unit price and corresponding value of the goods and materials in order to fix a reasonable amount in the contract. However, the parties traditionally agree that these details need not be included in the signed contract, but, as mutually agreed, be recorded as the total value of goods in the Procurement section. These are commercial agreements in nature, so when the parties agree not to include a detailed list of goods in the contract, the nature of commercial activities cannot be changed. From the argument that equipment has to be fully-assembled and ready-to-use without the need for any further assembly so as to apply the 1% CIT rate for such

No.	Issue	Recommendations
	However, in fact, local tax authorities would argue that, in order to apply this rate, the contract shall provide, in detail, the quantity and value (unit prices) of **each** material and equipment provided by the contractor to the developer. Therefore, if the contract only indicates the total value of procurement, not the unit prices, tax authorities would argue that the income from the supply of materials and equipment under the procurement section is subject to the CIT rate of 2% for "*Construction and installation services that include procurement of materials or machinery and equipment"*, instead of the CIT rate of 1% as prescribed for commercial "*distribution and supply of goods, materials, supplies, machinery and equipment*". Tax authorities may even further argue that, to apply the 1% CIT rate for such commercial activities, equipment has to be fully-assembled and ready-to-use without the need for any further assembly. Goods, supplies, materials and components are subject to a tax rate of 2% together with the construction work items so that this construction activity can be deemed to include procurement of materials.	commercial activities, we believe that it is irrelevant with common practices and existing regulations on contractor taxes. In fact, heavy machines and equipment of large sizes are often imported as individual components to ease transportation. After being transported to the site, these will be assembled into a complete equipment or machinery. The value of goods purchased is not inclusive of installation services. For installation services, their value is determined separately and taxed using tax rates on services. Due to these reasons, it is recommended that the General Department of Taxation/Ministry of Finance have a review and soon provide clear guidance on the above issues for consistent implementation by local tax authorities in line with business practices of contractors and enterprises.
28	**Contractor tax in case the main contractor commissions part of the works in the main contract to Vietnamese subcontractors or foreign subcontractors** According to Point b2, Clause 1, Article 12 and Point b2, Clause 1, Article 13 of Circular 103, *in case a foreign contractor signs a contract with Vietnamese sub-contractors or foreign sub-contractors who pay tax using the declaration method or foreign sub-contractors who pay tax using the hybrid method to commission part of the works in the main contract signed with the Vietnamese party and the list of such Vietnamese sub-contractors and foreign sub-contractors is enclosed with the main contract, the VAT/CIT-taxed income of the foreign contractor does not include the value of works performed by Vietnamese sub-contractors or foreign sub-contractors.* If we interpret this correctly, in order for the foreign contractor to exclude the value of the works performed by Vietnamese sub-contractors or foreign sub-contractors from their VAT/CIT-taxed income, the main contract signed with the developer should have an agreement on the assignment of part of the works to Vietnamese subcontractors or foreign sub-contractors and a list of such Vietnamese sub-contractors and foreign sub-contractors. These are sufficient conditions and it is not necessary that the main contract between the contract and the developer must present in detail the quantity and value of the works to be commissioned to each Vietnamese or foreign subcontractor.	For turnkey contracts, the contractor is fully accountable to the project developer. The developer will not enter into direct contracts with subcontractors. However, for quality control and compliance with relevant regulations (bidding, construction or tax laws, etc. for example), the developer will need to be aware of participating subcontractors to see if they meet necessary requirements and standards. Therefore, in the main contract, the parties should clearly agree on which subcontractors are allowed to participate in the project and which items/part of the projects they can perform. The list of subcontractors in the contract approved by the developer is a tentative list based on the mutually agreed technical plan. After the main contractor is concluded with the developer, the main contractor will sign official contracts with the subcontractors and such details as work coverage and contract price for each subcontractor will be formally agreed and approved. At the time of signing the main contract with the developer, these details have not been

No.	Issue	Recommendations
	However, in practice, some local tax authorities argue that, in order to apply this regulation, the quantity and value of the works to be commissioned to each Vietnamese or foreign subcontractor have to be clearly stated in the main contract.	officially agreed by the parties, so they cannot be included in the main contract signed with the developer. Therefore, the requirement that detailed work coverage and contract value for each subcontractor be included in the main contract signed with the developer is unreasonable and impractical. Therefore, in line with current provisions of Circular 103, it is recommended that the Ministry of Finance/General Department of Taxation have a review and provide clear guidance on this issue for consistent interpretation and implementation at local level while protecting benefits of enterprises.
29	*Capital Gain Tax on offshore indirect capital transfer* In accordance with the Decree 12/2015/ND-CP, the income derived from transferring capital of foreign investors in Vietnam will be regarded as taxable income earned in Vietnam irrespective of where the transactions take place. However, there have been no subordinating guidance for such provision and there left many unaddressed concerns for taxpayers (i.e. What is the tax rate? How to calculate the tax base? Who is responsible for tax withholding / declaration? Should a double treaty relief be applied? Etc.).	For a consistent treatment and clear framework for implementation, it is recommended that MoF should provide detailing guidance on this matter of concern soon.
30	*Carry forward of interest expenses in case EBITDA is negative* According to the provision of Decree 132/2020/ND-CP, interest expenses of a taxpayer shall be deductible within the cap of 30% net operating profit before interest, tax, depreciation and amortization ("EBITDA"). The exceeding amount of the current year shall be carried forward to determine the deductible interest expenses within next 05 years. Decree 132 and guiding regulations do not have a provision on how the tax treatment should be if the EBITDA is negative. We observed that some local tax authorities have taken the approach whereby the exceeding amount in such a case shall become a permanent adjustment (i.e. carry forward is not allowed). We find that this treatment is not reasonable, causing disadvantage for enterprises because based on the current regulations in Decree 132, there is no guideline that stipulates that if EBITDA is negative, that net interest expense will not be paid. carried forward to the next tax period.	For clarity and consistency, it is recommended that MoF / GDT should provide an official guidance on this matter.
III.	**Tax issues with related-party transactions**	
31	**Issues faced in the application of the advance pricing agreement (APA) mechanism in tax administration for enterprises having related-party transactions have not been addressed for years.**	VBF has the following recommendations: i. The Government of Vietnam shall require authorities at all levels to completely handle APA dossiers, creating

<table>
<tr><th>No.</th><th>Issue</th><th>Recommendations</th></tr>
<tr><td></td><td>The application of the APA mechanism is necessary because this is widely adopted by tax authorities in many other countries to effectively manage cross-border transaction revenue. In principle, this mechanism will bring benefits to taxpayers also and facilitate Vietnam’s integration with the rest of the world on tax management practices. This is still a new mechanism and Vietnam does not have much practical experience on this; yet, it has been 8 years since Vietnam’s first adoption of Circular 201/2013/TT-BTC on APA application (December 2013), with additional introduction of Decree 126/2020/ND-CP (Article 41) and Circular 45/2021/TT-BTC recently, but no bilateral APA dossiers have been approved and applied, leading to a large backlog of taxpayers' APA applications that have not been adequately handled despite a legal basis in place. By VBF observations, taxpayers face the following barriers:
- Vietnam has not yet published the commercial database used in processing related-party transactions and APA dossiers, thus providing no legal basis for verification and handling of issues in communications with tax authorities of other countries. Tax authorities in other countries in the region such as Japan, South Korea, Singapore, Malaysia and Indonesia are all using the commercial database as a reliable database in processing APA dossiers.
- Current regulations are unclear on the calculation and application of the standard market price range in bilateral APA dossiers using 1-year or 3-year average data as of the date of APA application.
- Circular 41, according to international practices, removes provisions on time frame needed to process APA dossiers in each period, but in fact, no dossier has been processed completely since 2014, leading to a large backlog. Taxpayers are also not regularly updated on the progress of processing. Meanwhile, other countries have effectively deployed this mechanism and handled taxpayers’ application as follows:

<table>
<tr><th>Year</th><th>2018</th><th>2019</th><th>2020</th></tr>
<tr><td>China</td><td>156</td><td>177</td><td>N/A</td></tr>
<tr><td>Japan</td><td>146</td><td>145</td><td>N/A</td></tr>
<tr><td>South Korea</td><td>204</td><td>218</td><td>225</td></tr>
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</td><td>favorable conditions for taxpayers while not removing the time frame needed to process such dossiers (according to international practices) that would otherwise lead to backlog at all levels and the fact that taxpayers are not provided with timely updates on the progress of handling APA dossiers.
ii. Vietnamese tax authorities should immediately publicize the commercial database used in processing APA dossiers and improve the legality of this commercial database to facilitate its use among taxpayers.
iii. It is recommended that there be clear regulations on the basis of calculation and application of the standard market price range in APA dossiers:
• Weighted average data in the most recent 3 years of selected independent comparables as of the date of APA application.
• The standard independent transaction range proposed in the bilateral/multilateral APA dossiers is the set of values from the 25th to the 75th percentiles according to international practice.
iv. The Ministry of Finance and the General Department of Taxation should amend regulations in a way that local tax authorities will not be involved in APA appraisal, discussion and negotiation. Local tax authorities should only be involved in providing information to the General Department of Taxation when needed.

Besides, we also have some other recommendations to the Government and the Ministry of Finance:
a. Provide additional guidance to the General Department of Taxation on cross reference to bilateral APAs signed by companies in the same taxpayers’ group with other foreign tax authorities sharing the same function as taxpayers in Vietnam in order to speed up the approval</td></tr>
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<tr><th>No.</th><th>Issue</th><th>Recommendations</th></tr>
<tr><td></td><td>
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<tr><td>Singapore</td><td>N/A</td><td>84</td></tr>
<tr><td>Indonesia</td><td></td><td>153</td></tr>
<tr><td>Malaysia</td><td></td><td>421</td></tr>
</table>
Local tax departments are joining the General Department of Taxation in APA appraisal, discussion and negotiation while also performing tax audits and inspection of taxpayers. However, according to Circular 41/2021/TT-BTC, when an APA dossier is suspended from negotiation, withdrawn, canceled or revoked, the information and data provided by the taxpayer in the formal APA application required explanations, annual APA reports and ad hoc reports will <u>not be employed by tax authorities as evidence or documents for tax audits, inspection or imposition on taxpayers.</u> This provides no guarantee that the local tax authorities will use this information and data in their tax audits and inspection.</td><td>and appraisal of APA applications based on international practices.
b. Issue a mechanism on the application of advance pricing agreements that are valid for at least 5 years for unilateral APAs in order to simplify tax administrative procedures and create favorable conditions for taxpayers in performance of transactions with related parties.</td></tr>
<tr><td>32</td><td>Clearer regulations on expanding the scope of comparability analyses, and criteria for comparability analyses, adjustments for material differences in Decree 132.

During tax inspections, the tax authorities conduct queries over independent comparables due to:
• They do not have the same year of incorporation as the company being inspected;
• There is a difference in working capital with the company being inspected;
• There is a difference in revenue size compared to the company being inspected; and
• The comparables are located outside of Vietnam in countries where the conditions of the industry and the economic growth level are not similar to Vietnam (comparison between Vietnam and India/Thailand/Bangladesh, etc.).

This is the basis to drop comparables located outside of Vietnam and fix tax rates for taxpayers.</td><td>In fact, it is most ideal to find independent comparables sharing the year of incorporation and same size of working capital and revenue in Vietnam with taxpayers. However, it is difficult to find independent comparables that fully satisfy these criteria due to limited databases and publicly available information.

Decree 132 does not provide specific guidance on how many independent comparables sharing the year of incorporation and same size of working capital and revenue should be selected or which countries are determined to have the same conditions of the industry and the economic growth level as Vietnam so as to make it clear to taxpayers for their comparability analysis and search for independent comparables.

Accordingly, for certain industries in which there are insufficient number of independent comparables in</td></tr>
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No.	Issue	Recommendations
		Vietnam, it is recommended that the Government/Ministry of Finance introduce additional guidance clarifying that: • In the event that there are no comparables sharing the same year of incorporation and same size of working capital/revenue as the company being inspected, to what extent can the company being inspected and its comparables differ in terms of the year of incorporation and size of working capital/revenue? • Criteria to determine countries with similar economic development levels as Vietnam.
33	**Are foreign contractors subject to compliance with Decree 132?** Foreign contractors provide CIT declarations according to the tax imposition method and VAT declarations according to the tax credit method. So are foreign contractors subject to compliance with Decree 132? If yes, how should tax declarations using annexed forms be made? Currently, these annexed forms are only applicable to taxpayers who file their tax declaration and finalization annually, not on a case-by-case basis.	It is necessary to clarify whether foreign contractors are required to declare related-party transactions under Decree 132?
34	**Introduce additional regulations on analysis, comparison, selection of independent comparables and methods to determine related-party transaction prices for outsourcing service providers** Due to the limitation of the commercial database, the number of outsourcing service providers is quite small. Meanwhile, it is currently required that there be at least 5 similar independent comparables. Given the limitation of the commercial database and the threshold requirement of Decree 132, taxpayers face difficulties in finding similar comparables that are outsourcing service providers. In fact, the most sought-after companies are manufacturing ones.	It is recommended to introduce additional regulations and guidance on analyzing and adjusting differences between outsourcing service providers and companies with manufacturing functions.
35	**Decree 132 provides no guidance on comparability analysis, adjustment and quantification of operational cost factors taking into account Covid-19 impacts on businesses.** The world economy was heavily affected by the Covid-19 pandemic in 2021 and 2021 as seen in most industries. The COVID-19 pandemic shows no signs of abating with complicated developments. In Vietnam, despite the Government's strong measures to control the pandemic, most businesses faced difficulties in production and business operations, including: • Delayed and suspended production and business activities during COVID-19 surges; • Impacts of the global demand/supply crisis, leading to delays in production, business operations and product supply;	Currently, many businesses are experiencing significant operating losses (with some to have filed for bankruptcy/business closures) during 2020-2021 (and possibly in subsequent years, depending on the development of COVID-19 pandemic). Decree 132 was issued on November 5, 2020 after the first Covid-19 outbreak, with policies, not specific regulations, on comparability analysis, adjustment and quantification of operational cost factors taking into account Covid-19 impacts on businesses. This can lead to a lack of

No.	Issue	Recommendations
	• Significantly lower business revenue/production output in line with the domestic/international market slowdown, end customer needs and consumption trends (fewer orders from end customers, for example); • Coverage of different fixed costs during stagnation, creating a large burden in terms of operating costs, while the generated income is not enough to cover business expenses; • Other factors.	transparency and many face difficulties in explaining their financial performance in 2020-2021 with tax authorities. It is recommended to provide additional instructions on this, which is missing in Decree 132, or issue detailed instructions on the following: • Methods to determine related-party transaction prices/options to handle violations during the Covid-19 pandemic; • Methods for adjustment/quantification of material effects (force majeure events) arising from the Covid-19 pandemic for explanations and demonstrating compliance with regulations on determining related-party transaction prices in Vietnam. Some of the typical factors that should be taken into account include: production capacity; labor costs during of stagnation; fixed costs; working capital; impacts of the global supply and demand crisis; impacts of market demand/trends; etc
36	**Does the profit margin adjustment according to Decree 132/2020/ND-CP on related-party transaction prices lead to adjustment of customs and VAT declarations?** There are many real-life situations where businesses in Vietnam enter into purchase, sale, service and even copyright transactions with related parties. For enterprises in Vietnam, a return on sales that is below the standard independent transaction value range should lead to an adjustment to the value within the standard independent transaction value range in line with Decree 132/ 2020/ND-CP. However, this is an adjustment to the ratio of net income before CIT to total expenses (or revenue) of the entire enterprise without adjustments to individual purchase, sale, service and copyright transaction.	There are no guidance in current legal documents on: • When an enterprise adjusts the transfer prices based on the ratio of net income before CIT to total expenses (or revenue) of the entire enterprise, is it necessary to update the export/import customs declaration for each individual transaction with related parties? This is in fact quite challenging for businesses due to a large number of transactions arising throughout the year and it is not possible to separate each sale/purchase transaction with each related party. • When the transfer prices are adjusted (self-adjusted by the enterprise or fixed by the tax authority), is it necessary to adjust VAT obligations as Decree 132 only governs CIT obligations? If yes, what criteria are there to adjust VAT obligations related to transactions with related parties?

No.	Issue	Recommendations
37	*Advance Pricing Agreement (APA)* From international practice and experience, APA is an effective tool for tax management of competent authorities, provision of tax certainties to taxpayers and elimination of potential double taxation issues between tax jurisdictions. In several countries, i.e. China, Korea, Japan, etc., the tax authorities have been signing many APAs with the local taxpayers. In Vietnam, APA regulations have been upgraded since 2020 under the Tax Administration Law 38/2019, Decree 126/2020/ND-CP and Circular 45/2020/TT-BTC.	Therefore, it is highly recommended that the competent authorities (i.e. Government, Ministry of Finance (MOF), General Department of Taxation (GDT), etc.) to continue processing the APA applications of local taxpayers for purpose of achieving the above-mentioned benefits.
38	*Mutual Agreement Procedures (MAP)*	While Viet Nam has made efforts to resolve MAP cases through increasing the number of in-charge officials, it is recommended that the MOF/GDT considers further necessary actions to ensure a timely, efficient and effective resolution of MAP cases – for example: ensure that sufficient resources are made available for the competent authority function in a way that allows an adequate use of such resources for the resolution of MAP cases in a timely, efficient and effective manner.
IV.	**Customs issues**	
39	**Problems in retrospectively collecting VAT at point of importation on goods imported by subcontractors and supplied to EPEs** The General Department of Customs has recently issued official documents No. 4344/TCHQ/TXNK dated October 17, 2022 and No. 4458/TCHQ-TXNK dated October 24, 2022, indicating that, if contractors, both subcontractors and main contractors, meet dossier requirements as prescribed in Circular 38/2015/TT-BTC and Circular 39/2018/TT-BTC, they will be exempt from import tax for goods used to build factories and offices, and install equipment at export processing enterprises (EPZs). However, these documents do not specifically mention VAT exemption at point of importation for these goods, leading to the fact that local customs authorities are still requiring VAT payment from contractors for their import of goods used to build factories and offices, and install equipment at EPZs. Ministry of Finance, at its Official Letters No. 2870/BTC-TCHQ dated March 5, 2013, No. 12366/BTC-TCHQ dated September 17, 2013, No. 1697/BTC-TCHQ dated February 8, 2014, with cross reference to Clause 20, Article 5 of the VAT Law No. 13/2008/QH12, has made it	In order to promote consistent application of policies and legal provisions as well as ensure fairness and equality among investors, it is recommended that the General Department of Customs make it clear that contractors are exempted from VAT on import of goods goods used to build factories and offices, and install equipment at export processing enterprises.

No.	Issue	Recommendations
	clear that the contractors indicated in such official letters are entitled to import tax and VAT exemption at point of importation.	
40	**One-time amendments to declarations for same errors** In performing customs procedures, businesses, especially those having a large volume of imports and exports, may inevitably commit some errors such as: - Incorrect identification of HS codes for products that cannot be easily classified - Incorrect determination of the amounts to be declared and allocated to the customs value of imported goods, etc. These errors (found during self-review by enterprises or by following new instructions by the customs authority) may require additional declarations or amendments to previous declarations. According to current regulations on customs procedures, additional declarations can only be made for individual declaration, increasing administrative burden on businesses to ensure compliance with the law.	It is recommended that the General Department of Vietnam Customs have a review and provide instructions on one-time additional declaration (according to a list or a representative declaration) for the same error to ease implementation by enterprises. Also, in cases where there is both tax payable [for goods listed] on certain declarations and tax amount to be refunded [for goods listed] on some other declarations, it is recommended that the customs authority allow businesses to offset the tax amount to be paid into the state budget or apply for a one-time tax refund to reduce the administrative burden on businesses.
41	**Determination of other business activities of export processing enterprises (EPE) according to Decree 35/2022/ND-CP** According to Article 26, Decree 35/2022/ND-CP, if an EPE has other business activities (besides export processing activities), tax incentives granted in the form of tax reduction or exemption for its assets, machinery and equipment used for other business activities must be reimbursed. At Official Letter No. 3804/TCHQ-GSQL dated September 14, 2022, the General Department of Vietnam Customs allows local customs authorities to, based on information on the Investment Registration Certificate or the EPE Registration Certificate, determine export processing activities and other business activities as a basis to define tax obligations. However, in the implementation process, there remain contrasting interpretations for which more detailed guidance from the General Department of Vietnam Customs and the Ministry of Finance will ne needed, including: - EPEs lend their molds, machinery and equipment to domestic enterprises, for the latter to produce and sell goods to the former. - EPEs import raw materials to, as formally declared, serve their production of export products, but actually use them to produce goods for domestic sale (with export procedures performed as prescribed).	It is recommended that the General Department of Vietnam Customs, in coordination with the Ministry of Finance and the Ministry of Planning and Investment, review and provide consistent guidance to businesses on the above cases to facilitate their business operations and legal compliance.

No.	Issue	Recommendations
	Without clear conclusions, it is difficult for enterprises and customs authorities to precisely determine tax obligations as well as customs procedures, thus causing issues in production and business activities.	
42	**Trade of goods in bonded warehouses of foreign-invested businesses** Nowadays, one of the common practices by businesses is to import goods (from other countries, a free trade zone or in the form of on-spot import) and then export the same goods to other countries or non-tariff zones. In order to reduce transportation costs as well as facilitate customs procedures, enterprises wish to use bonded warehouses for the above transactions. However, from the perspectives of Ministry of Industry and Trade as well as the General Department of Vietnam Customs (as indicated in, for example, Official Letter No. 1256/TCHQ-GQ5 dated March 20, 2020 of the General Department of Vietnam Customs, Official Letter No. 1147/XNK-CN dated October 12, 2020 of the Ministry of Industry and Trade, etc.), foreign-invested businesses are not allowed to transfer of ownership (by ways of purchase and sale of goods) as this is cross-border trade. This is not really consistent with current regulations as, according to Clause 1, Article 63 of the Customs Law, goods owners may transfer ownership of goods in bonded warehouses. This is not cross-border trade and is completely suitable with the use purposes of bonded warehouses, and customs procedures for this are also guided in the current customs regulations.	Conflicting opinions and regulations between ministries are making it difficult for businesses in performing their business activities. Many businesses have thus stopped adopting this business model even though there are no restrictions in the current legal documents. It is recommended that the General Department of Vietnam Customs and the Ministry of Industry and Trade have a review and provide appropriate guidance to both businesses and customs authorities.
43	**Import duty refund for goods whose business purpose is changed and that are then exported to a foreign country or a free trade zone** According to Article 19, Law on Import and Export Taxes 2016 and Article 34, Decree 134/2016/ND-CP (amended by Decree 18/2021/ND-CP), paid import duties on goods that are imported but then re-exported shall be refunded and export duties thereon shall not be applicable. Taxpayers shall indicate accurately and honestly, on customs declarations, that re-exported goods are previously imported goods. Goods are only eligible for duty refund if they have not been used, produced or processed. Currently, for a number of enterprises engaged in both production and commercial activities (exercising the right to export and import), there have been cases where the goods are initially imported for for export production (eligible for tax exemption) but then they change their production plan and, with buyers/partners identified, the business purpose of such imported goods, pay import duties and VAT, and export the goods as they are to other countries. Thus, these goods satisfy the conditions for import duty refund according to the above provisions.	A note *that "the goods have not been used, produced or processed"* and filing of original import declarations or declarations of changes of the business purpose using Form A42 are not clearly specified in legal documents such as laws, decrees and circulars, with official instructions mainly provided by the General Department of Vietnam Customs. The declaration on changes of the business purpose using Form A42 as well as the export declaration using Form B13 have been physically checked by the customs authorities to determine if the original conditions of a goods are unchanged at the stage of exportation. Accordingly, customs authorities should also have enough grounds to determine if the goods have not been used, produced or processed.

No.	Issue	Recommendations
	However, enterprises are facing difficulties in applying for tax refund with local customs offices due to the following: - Enterprises fail to indicate in the goods description or notes of the export customs declaration that *"the goods have not been used, produced or processed"* . - For priority enterprises, as their declarations are all green-flagged, physical inspection is not allowed and the customs authority has no basis to confirm if the goods are as exported as they are imported. - In performing export procedures, the enterprises have also indicated that the goods for export are those declared on Form A42 on changes of the business purpose.	Particularly for priority enterprises, the General Department of Vietnam Customs should provide guidance to local customs offices on duty refund in this case.
44	**Tax refund for on-spot imports that are exported to a foreign country or into a free trade zone** According to Clause 1a, Article 34, Decree 134/2016/ND-CP as amended by Decree 18/2021/ND-CP: *"1. Paid import duties on the following imports that have to be re-exported shall be refunded and export duties thereon shall be canceled:* *a) Imports that have to be re-exported and returned to their owners; Imports that have to be exported to a foreign country or exported into a free trade zone for consumption therein."* Currently, there are cases where an enterprise imports goods in the form of on-spot import as required by a foreign trader, then re-exports the imported goods in their original condition to a foreign country and into a free trade zone under the type code B13, yet it is considered for import duty refund.	On-spot imports are also imported goods that are subject to goods management regulations and for which import duties and VAT are paid in full at the stage of importation before re-exported by the original importer to a foreign country or into a free trade zone. Goods meet eligibility conditions as they have not been used, produced or processed. Therefore, we believe that the enterprises are eligible for paid import duties in this case. We respectfully request that the General Department of Vietnam Customs have a review and provide specific guidance to enterprises and local customs offices.
45	*Prevailing Customs regulations providing guidance on daily customs operations relating to declaration, clearance, and inspections.* *Decision no. 707/QĐ-TCHQ dated 05 May 2022 by Director of General Department of Customs ('GDC') RE Planning of digital transformation of Customs sector by 2025, orientation to 2030.* ***Customs operational challenges due to discrepancies/ misalignments between Customs regulations and IT solution/ system infrastructure:*** *- Vietnam Customs introduced Vietnam Customs Law in 2014. Subsequently, Vietnam Customs issued Decrees and Circulars to provide legal frameworks for implementation of VNACCS/VCIS (i.e. automatic customs clearance system. The objective of the legal frameworks*	*Following the direction in Decision no. 707/QĐ-TCHQ dated 05 May 2022 by GDC, we suggest Vietnam Customs to continue reviewing, and investing time and resources to:* ✓ *Complete and comprehend legal frameworks, to support developing Customs technology in improving their synchronization, consistency, functionality, and adaptability;* ✓ *For the customs declaration software currently being provided free of charge by the General Department of*

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	was to facilitate and achieve transparency of customs operations, risk management, and inspections. *- However, in practice, the following challenges were faced by both Vietnam Customs and the businesses:* *+ **From Customs side:** VNACCS/ VICS has core functions to facilitate:* • *the clearance of imported and exported goods,* • *procedures for management of goods in transit,* • *means of entry and exit.* *However, VNACCS/ VICS capabilities is **insufficient** for Vietnam Customs to perform end-to-end process of operation and management. Consequently, GDC self-developed, and maintain about 20 additional satellite IT systems (i.e. home-grown systems) to manage the other customs fields and operations, especially to address new requirements to cope with complex developments in the global supply chain. The home-grown systems operate in parallel with the VNACCS/VCIS.* ⇨ *The current Customs IT systems do not have sufficient capabilities to support data exchanges, synchronization, and integration/ aggregation of other technology solutions. Additionally, development of supplementary functions to the current IT systems is not easy for Vietnam Customs to support businesses' needs, e.g. having bulk adjustments/ amendments for customs declarations. These limitations hinder Vietnam Customs to establish a comprehensive technology infrastructure to effectively support Customs operations and risk management requirements.* *+ **From the business side:** Companies/ customs declarants must use an intermediary system/ software as the 'user interface systems' (i.e. '**E-cus systems**'). There are however **inconsistencies** in the E-cus systems available in the market as they are developed by various independent service/ software developers that have different understandings, interpretations, and frequency of updates to align with the latest Customs regulations.* ⇨ *There have been cases where regulations were updated but the functions in E-cus systems were outdated. The inconsistencies have resulted in Customs disputes.* *E.g. The regulations no longer require companies to 'Register Bill of materials to Customs before exporting finished goods' before filling the annual Customs Finalization Report.*	*Customs to the enterprises, it is necessary to ensure that tbe systems' functionality and interface are timely updated and consistent with Customs law and regulations, easy to use for customs declarants;* *Where possible, introduce/ initiate solutions or functions that allow companies to directly interact with Customs' interface, not through an intermediary system (e.g. direct sharing data of warehouse records to report the management of duty-exempted materials).*

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	However, there are currently E-cus systems that still have this action as a compulsory step, which created a lot of confusions and challenges during Post-Clearance Audits	
46	***Customs approach to publish scheme and guidance in handling Transfer pricing adjustments:*** *- As of Oct 2022, Vietnam recognized the highest increase of Foreign Direct Investment ('FDI') since 2018, with the ratio of realized FDI enterprises to registered capital recorded as of 82.3%. The FDIs are mainly by multinational companies ('MNCs'). To comply with OECD guidelines and adopt common international practices, MNCs apply the Transfer Pricing ('TP') principle as an official scheme to govern the pricing policy of goods traded between related parties.* *- In Vietnam, where are TP adjustments to achieve the target operating margin, importers or exporters in Vietnam may need to make annual adjustments to historically declared values/invoiced values. However, there is no clear guidance provided by Vietnam Customs (either under current regulations, or other published guidelines), on the approach to manage such TP* ***adjustments,*** *particularly where* ***a significant*** *number of customs declarations are impacted and require amendments.* *- In absence of guidance by Vietnam Customs, companies in Vietnam, especially MNC subsidiaries, face uncertainties on how to manage TP adjustments. Companies that have voluntarily disclosed the TP adjustments to local Customs and made amendments to customs declarations after 60-days from the date of initial declaration date were issued with customs* ***administrative penalty****. Additionally, there is a risk that the customs compliance status of these companies may be* ***downgraded.*** *- Moreover, from an operational perspective, without a mechanism to allow bulk adjustments, both Customs officers and companies may face* ***challenges*** *in handling the amendments of huge volume of customs declarations.*	*- Based on our observation, other ASEAN countries like the Philippines, Singapore, Thailand, etc. have recognized the correlation between TP and customs valuation, thus introducing mechanisms to manage TP adjustments and companies' voluntary disclosure for Customs compliance.* *- Accordingly, we suggest that Vietnam Customs and Tax authorities should review and consider developing and introducing an official legal basis/ scheme to manage amendments to Customs declarations resulting from TP adjustments and publish standard guidance to companies to comply with. Having mechanisms to manage amendments of customs declarations resulting from TP adjustments will not only encourage the companies' to be compliant, but it also potentially attracts more FDI to Vietnam for economy development.* *- We propose to allow enterprises to make a one-time adjustment (not on each declaration) and not to impose administrative sanctions on enterprises in cases of adjusting the value of related-party transactions at the end of the year, on the basis that this is not the case of "errors" in the customs declaration process. This adjustment cannot be accurately determined at the time of customs clearance for import and export of goods.*
47	***Risk management in Customs operations*** ***(i.e. Circular no. 81/2019/TT-BTC dated 15 Nov 2021) issued by Ministry of Finance*** ***Unclear criteria in operating Customs risk management:*** *- Since the issuance of official regulations and implementation of Risk management in Customs operations in 2019, there has been recognized success in Vietnam Customs' efforts to*	*To encourage companies to apply for the trusted-trade program and effectively to manage their compliance, we recommend Vietnam Customs to review current gaps, and provide* ***more clarity*** *to companies, especially in terms of:* *- association/ linkage between a company's risk-profile and customs compliance rating; and*

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	encourage companies self-manage their customs compliance. The trusted-trader program pilot also received positive feedback from both companies and Customs officers. *- However, there are still uncertainties on the guidance/ criteria for companies to correlate the following classifications:* *+ the different 'customs compliance rating levels' - which range from 1 to 5;* *+ the different 'customs risk profile levels' – which range from 1 to 9, and their link to 'high, moderate, low' risk definition; and* *+ the corresponding level of customs inspections at border-point (i.e. red lane, yellow lane, and green lane to customs declarations).* *- This creates some challenges for companies to self-assess, understand, and identify areas for improvement to elevate their customs compliance/ risk-level rating, as well as their working or collaborating with Customs in charge to monitor the improvement progress.*	*- their respective percentage of customs inspections the company may be subject to.*
48	*On-the-spot exportation* The General Department of Customs (GDC) has provided their opinion that goods which are exported but physically delivered to a local buyer in Vietnam under the instruction of the overseas buyer will not be allowed to carry out on-the-spot import and export customs procedures in case such overseas buyer does not satisfy conditions to be considered as not having presence in Vietnam. This matter is initially raised by Binh Duong Customs Department during their customs management operation, and the response of GDC seems merely being based on the interpretation of laws on foreign trade management, laws on customs and laws on investment. However, such treatment will trigger difficulties in securing sustainable supply chains for manufacturing industries in Vietnam as well as trigger significant tax and duty impacts on the on-the-spot exported finished goods under the above-mentioned arrangement.	It is recommended that the MOF/ GDC should review the relevant laws and regulations to soon have a clear solution/ guidance on this matter.
V.	**Other Issues**	
49	**Problems with notification and registration of sales promotion programs according to the Government's Decree 81/2018/ND-CP dated May 22, 2018 detailing the Commercial Law on trade promotion** Decree 81 governs sales promotion activities and, among others, requires traders to notify and register their sales promotion programs in advance. Tax authorities normally, during their tax audits at enterprises, require enterprises to present evidence to prove that they have notified and registered their sales promotion programs as	To ensure that businesses can stay in control of their business decisions, reduce unnecessary administrative costs, promote distribution of goods, and deliver the best benefits to end consumers while creating a clear legal basis to avoid arbitrary and inconsistent application of the law at local level, it is recommended that the Ministry of Industry and Trade review and revise relevant provisions in Decree 81 to make in clear that notification and registration, to/with local departments of industry and trade, of sales promotion

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	prescribed by the commercial law, in order for relevant expenses of enterprises to be validated for tax payment purposes or to be entitled to the 0% VAT rate according to the VAT law. However, the concept of "sales promotion" under the current Commercial Law is very broad, defined as "*commercial promotion conducted by traders to promote the sales of goods or the provision of services by offering certain benefits to customers"*. Moreover, the provisions in Decree 81 are also vague, leading to an interpretation that all activities/programs aimed at promoting the sales of goods and the provision of services shall be notified or registered as required under Decree 81. On the other hand, given a lack of clear provisions in Decree 81, there are cases where local trade authorities are interpreting its provisions in different ways, thus leading to inconsistent application. In many cases, businesses are refused by local trade authorities when registering or notifying their programs, while local tax authorities stay on a view that businesses must notify or register such programs, which is troublesome and affects business operations and benefits. In fact, sales promotion activities/forms of businesses can be diverse. Sales promotion programs directly aimed at end consumers can take different forms, including provision of goods and services to customers at a price lower than the previously charged price; provision of goods and services to customers together with prize-contest entrance tickets for purpose of selecting prize winners according to the rules and prizes as already announced; provision of goods and services, coupled with opportunities for customers to participate in games of chance; or provision of goods together with gifts and free-or-charge services to customers, among others. For businesses that distribute goods, especially consumer goods, to end consumers through a multi-layer distribution system, sales promotions can be done only within the distribution system, specifically between manufacturers and distributors or between distributors and agents at all levels, but not directly aimed at end consumers. For sales promotion programs directly aimed at end consumers, it is necessary to notify and register such programs with local departments of industry and trade as prescribed for transparency and consumer protection, avoiding deceptive marketing practices and business failure to fulfill their commitments to customers as advertised. However, for promotion programs for distributors and agents, including discounts to agents, etc., between manufacturers and distributors or between distributors and agents, these activities are always agreed upon in the form of contracts or notices between the parties. These activities are specifically for certain agents, not directly aimed at end consumers, for the purpose of business coordination between the parties to jointly promote the provision of goods and services to consumers, thus generating higher sales. We believe that, for	programs within the distribution system between manufacturers and distributors or between distributors and agents at all levels is not required. In addition, for sales promotion programs that shall be notified or registered, the Ministry of Industry and Trade should establish the one-stop service that handles submitted notifications and registrations. Accordingly, there is only one team/agency to receive registrations and information about such programs is publicly available on electronic media in all provinces and cities. This will both ease business registrations and reduce costs for businesses and the government as a sales promotion program will be received and handled all by one agency to avoid repeated submissions and processing in all provinces. It will also avoid inconsistent interpretation of the laws between local agencies that has caused certain challenges to businesses.

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	these programs, registration and notification with local departments of industry and trade are unnecessary, increasing administrative burden and high and unnecessary compliance costs. In many cases where all departments of industry and trade nationwide should be notified, businesses often encounter problems with online submission due to system errors, delayed responses from some provinces, different interpretation of the law by different entities, etc., causing barriers to business efforts in generating higher sales and lowering performance of the entire distribution channel.	
50	Pursuant to Article 4 of Circular No. 25/2018/TT-BTC: *"b. Income from securities transfer includes income from transfer of stocks, the right to buy stocks, bonds, treasury bills, fund certificates and other securities according to Clause 1 Article 6 of the Law on Securities. Income from transfer of stocks by individuals in a joint-stock company is specified in Clause 2 Article 6 of the Law on Securities and Article 120 of the Law on Enterprises."* Pursuant to the Clause 1, Article 14 and Clause 1, Article 15, Circular No. 78/2014/TT-BTC: *"An enterprise's income from securities transfer is income earned from the transfer of its stocks, bonds, fund certificates and securities of other kinds under regulations."* *"An enterprise's income from capital transfer is income earned from the transfer of part or the whole of the capital amount the enterprise has invested in one or many other organizations or individuals (including the sale of the whole enterprise)."* According to the Official letter No. 12501/BTC-CST dated 20 September 2010 issued by Ministry of Finance: *"- Organizations and individuals that transfer shares in public companies in accordance with the Securities Law are securities transfers and subject to tax regulations for securities transfers.* *- Organizations and individuals that transfer shares in joint-stock companies that do not fall into the above cases shall apply regulations on capital transfer activities.* *The determination of a joint stock company as a public company is based on Articles 25 and 26 of the Law on Securities."* For organizations transferring shares in joint-stock companies, except the guidance in Official Letter No. 1250/BTC-CST of Ministry of Finance: Official Letter No. 12501/BTC-CST was issued a long time ago and is only a guiding document, not a legal document. Moreover, for individuals, the guidance in this official letter is not consistent with the provisions of Circular 25/2018/TT-BTC. Therefore, the MOF/GDT needs to study and consider promulgating	We propose that the MOF/GDT will consider to specify relevant legal documents and provide more specific guidances on tax policy on this matter, ensure consistency between regulations to facilitate businesses to comply with regulations.

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	appropriate guiding legal documents, ensuring legality, creating conditions for individuals and organizations to have a clear legal basis to apply.	
51	**Matters in relation to Special Sales Tax** During the period of 2017 - 2018, the Ministry of Finance has considered a proposal to apply Special Sales Tax ("SST") on sugar-sweetened beverages, excluding dairy products, at the tax rate of 10% in order to curb consumption, contribute into protecting the health of consumers and reducing excess weight, obesity and diabetes in Vietnam, as well as increasing revenue for the budget. However, so far, this proposal has not been submitted to the National Assembly for approval. However, on 5 January 2022, the Prime Minister issued Decision No. 02/QD-TTg on approving the National Nutrition Strategy for the period of 2021 - 2030 with a vision towards 2045 and on 19 May 2022, the Ministry of Health issued Decision 1294/QD-BYT on the Action Plan to implement the National Nutrition Strategy to 2025, both of which requires developing SST taxation policies on sugar-sweetened beverages. On 13 December 2022, the World Health Organization released a Manual on sugar-sweetened beverage taxation policies in order to support the development of taxation policies on sugar-sweetened beverages. There are many factors leading to excess weight and obesity, of which the key factors consist of consumption of foods high in fats, low intake of fruits and vegetables, genetic causes, watching TV and electronic equipment and lack of exercise, yet not solely from consumption of sugar-sweetened beverages. In addition, the SST taxation on sugar-sweetened beverages would result in an increase of the selling prices and hence opportunities for smuggled, counterfeit, imitated and poor-quality goods. When promulgating SST taxation policy for sugar-sweetened beverages, taxable products and tax base should be specified specifically and clearly, in which: (i) The concept of "sugar-sweetened beverages" should be clearly and specifically defined, i.e. whether they would include beverages containing sugar or sweetened beverages, regardless of whether they contain sugar or not. That is because there are a wide range of beverages including carbonated/non-carbonated soft drinks, fruit juices, flavoured milks and other dairy drinkable products, sweetened plant-based milk substitutes, energy/ sports drinks, sweetened iced teas, ready-to-drink coffees and concentrates;	It is recommended to the Government of Vietnam to carefully study the impact of the SST taxation on sugar-sweetened beverages to businesses and consumers and take a very comprehensive approach to this issue based on international practices and opinions of businesses in the industry in order for SST taxation on sugar-sweetened beverages not to lead to discrimination between sugar-sweetened beverages and other beverages. In the process of developing SST taxation policy on sugar-sweetened beverages, it is recommended that the Government of Vietnam to ensure the following issues: (i) The objectives of the policy are clear and the policy is well designed, promotes transparency and compliance; (ii) Targeted products are clearly defined in order to avoid confusion about which products are taxed and non-taxed; (iii) Tax base is clearly determined in order for businesses to calculate tax liabilities and reduce unnecessary costs in tax declaration; (iv) Consultation with a broad range of stakeholders in a due manner for ensuring the transparency and effectiveness of the policy development process. Apart from the taxation policy, it is recommended that the Government of Vietnam should consider implementing other policy solutions that are more market-friendly and

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	(ii) Whether tax base should be absolute or relative and subject to sugar content/ sweetness level on the basis that various types of products would have specific sugar content/sweetness level and hence different health effects.	have been proven to be effective in other countries such as propaganda and education about healthy lifestyles.
52	**Matter in relation to tax declaration for foreign contractors doing business via digital platform** Chapter IX, Circular 80/2021/TT-BTC ("Circular 80") dated 29 September 2021 issued by the Ministry of Finance providing detailed guidance on some articles of the Law on Tax Management No. 38/2019/QH14 dated 13 June 2019 and Decree 126/2020/ND-CP dated 19 November 2020 by the Government has introduced tax management regulations on foreign suppliers conducting e-commerce, digital businesses and other services in Vietnam without having a Permanent Establishment ("PE"). In accordance with Chapter IX of Circular 80, foreign suppliers who have no PE in Vietnam and conducts e-commerce and digital based businesses and other services in Vietnam ("foreign suppliers") are obligated to directly register, declare and pay taxes in Vietnam. For B2B transactions, organizations which are incorporated and operate in accordance with Vietnamese regulations and purchase goods/ services from foreign suppliers or else take charge of distributing goods/ services for foreign suppliers ("Vietnamese corporate customers") would take responsibility to withhold, declare and pay taxes on behalf of foreign suppliers as regulated in Circular 103/2014/TT-BTC dated 6 August 2014 by the Ministry of Finance ("Circular 103") in cases foreign suppliers have not registered, declared and paid taxes in Vietnam. For B2C transactions, intermediary payment service providers ("IPSP") would be obligated to withhold, declare and pay taxes on behalf of foreign suppliers based on the notification of General Department of Taxation in the event that foreign suppliers fail to register, declare and pay taxes as regulated. If Vietnamese individuals use cards or other methods to pay for foreign suppliers which leads to the inability of IPSP to withhold and pay tax, IPSP is required to provide the General Department of Taxation with monthly reports on detailed payments made to foreign suppliers. There are unclear matters in terms of the regulations on direct registration, declaration and payment by foreign suppliers, which has led to difficulties in ensuring compliance with tax filing obligations of foreign suppliers, including but not limited to:	It is recommended that the Government of Vietnam would carefully and openly consider questions and concerns as raised by foreign suppliers, consulting firms and other stakeholders in previous seminars, conferences and dialogues; and promptly issue and clear and specific guidance in order to remove obstacles towards facilitating compliance with the tax filing obligations of foreign suppliers in Vietnam.

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	(i) Determination of taxable revenue for Value Added Tax ("VAT") and Corporate Income Tax ("CIT") calculation purposes. The current regulation only states "revenue received by the foreign supplier", yet no further definition is provided. Therefore, we are not sure whether the tax base for tax calculation should be inclusive or exclusive of taxes. (ii) Circular 80 provides that taxable revenues are "*revenues that foreign suppliers received*" which has a very broad connotation and does not reflect the true nature of the revenues arising from e-commerce activities and digital-based business in Vietnam of foreign suppliers. If a foreign e-commerce platform must declare taxes on the entire revenue collected on behalf of the foreign seller on top of what the foreign seller is also declaring, it will lead to double taxation as both parties are declaring tax on the same amount. To align with international best practices in order to ensure fairness and no double taxation, Circular 80 should be amended to clearly stipulate that taxable revenues are the actual revenues that foreign suppliers earned, i.e. revenues relating to their own sales only. (iii) Contradiction exists between the guidance in Chapter IX and Form No. 02/NCCNN. This has led to different interpretations between the foreign suppliers and Vietnamese corporate customers for tax filing obligations for B2B transactions. Specifically when foreign suppliers have registered to declare and pay taxes directly in Vietnam, it is unclear whether Vietnamese corporate customers would still be obligated to withhold, declare and pay taxes on behalf of foreign suppliers in accordance with Circular 103 in cases such foreign suppliers fail to declare and pay taxes for B2B transactions (in cases of not declaring and paying taxes on behalf of foreign suppliers, whether and how Vietnamese corporate customers would need to maintain any supporting documents), or else once foreign suppliers have registered to directly declare and pay taxes in Vietnam, whether such foreign suppliers would be obligated to file taxes for both B2B and B2C transactions or have options to solely file taxes for B2C transactions. In addition, according to the current regulations on VAT, Vietnamese enterprises are not eligible to deduct input VAT if foreign suppliers declare and pay tax for B2B transactions (no VAT invoice and no withholding tax return). Circular 80 has not addressed this issue. (iv) Tax declaration return no. 02/NCCNN indicates that foreign suppliers must be responsible for the accuracy of declared data provided to the GDT. However, it is very difficult and impossible for foreign suppliers to validate such information meanwhile under the current	

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	regulations (i.e. Circular 103), Vietnamese businesses must comply with local laws and regulations when they are doing business in Vietnam. In addition, the inspection obligation lies with the Vietnam tax authorities. (v) Unavailability of specific guidance on procedures of claiming tax treaty benefits in case foreign suppliers would conduct hundreds/ thousands of business transactions with different customers in e-commerce and other digital platforms. (vi) No clear guidance of tax filing mechanism for foreign suppliers conducting e-commerce and digital based businesses and other services in Vietnam and constituting PE in Vietnam, as Chapter IX, Circular 80 would only be applicable to cases of foreign suppliers not having PE in Vietnam.	
53	Direct capital transfer Point 1, Article 14 of Circular 78/2014/TT-BTC guiding the declaration of CIT from capital transfer activities: "*In case the enterprise transfers the entire one-member limited liability company owned by the organization in the form of capital transfer attached to real estate, it shall declare and pay corporate income tax for transfer real estate and declare it under the corporate income tax return (form No. 08) attached to this Circular.*" Prior to 1 January 2022, according to the provisions of Article 16 of Circular 151/2014/TT-BTC amending Article 12, Circular No. 156/2013/TT-BTC guiding the Law on Tax Administration: "*7. Declaring corporate income tax for capital transfer activities* *a) Income from capital transfer of an enterprise is considered as other income, the enterprises earning income from capital transfer are responsible for determining and declaring the amount of corporate income tax from capital transfer in the annual tax finalization return.* *In case of transferring the entire one-member limited liability company owned by the organization in the form of capital transfer attached to real estate, tax liability must be paid*	We kindly request the Ministry of Finance to issue guidelines for defining specific cases that are considered as "*transfer of capital attached to real estate*" for enterprises to properly comply.

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	on occurring basis and declared under form No. 06/TNDN enclosed with this Circular and subject to annual tax finalization at the location where the enterprise has its headquarter. *b) A foreign organization doing business in Vietnam or earning income in Vietnam (collectively referred to as a foreign contractor) that does not operate under the Law on Investment or the Law on Enterprises having capital transfer activities would be subject to tax declaration on occurring basis.* *…* *Tax declaration dossiers for income from capital transfer include:* *- Corporate income tax declaration for capital transfer (under Form No. 05/TNDN issued together with Circular No. 156/2013/TT-BTC);*" Although pursuant to Circular 78/2014/TT-BTC and before 1 January 1 2022 under Circular 151/2014/TT-BTC, there are regulations on the use of form 06/TNDN for declaring CIT liabilities in case of transferring the entire single-member limited liability company which is owned by an organization in the form of capital transfer attached to real estate, such regulations do not specify or define which cases are considered as "*transfer of capital attached to real estate*". This makes it challenging for the enterprises to determine which form of the capital gain tax return to be used, especially when the Vietnamese enterprise (in which the capital is transferred) owns real estate in its asset structure (for example, land lease and factories attached to the land, which are considered as real estate). attached to land is also considered immovable property). It is worth noting that the method of declaring criteria in Form 05/TNDN and Form 06/TNDN are completely different.	
54	Indirect capital transfer Point 2d, Article 2 of the Law on CIT 2008 stipulates that "*Foreign enterprises without permanent establishments in Vietnam shall pay tax on taxable income arising in Vietnam*". Article 1 of the Decree No. 12/2015/ND-CP dated 12 February 2015 stipulates that: "*3. Taxable income arising in Vietnam of foreign enterprises specified at Points c, d, Clause 2, Article 2 of the Law on Corporate Income Tax is income received sourced from Vietnam*	Referring to international practice, we note that: • Many countries do not levy taxes on the transfer of capital in a foreign company that indirectly owns capital in the company in that country;

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	from operations. providing services, supplying and distributing goods, lending capital and royalties to Vietnamese organizations and individuals or to foreign organizations and individuals doing business in Vietnam or from capital transfer, projects investment, the right to contribute capital, the right to participate in investment projects, the right to explore, exploit and process mineral resources in Vietnam, regardless of the location where the business is conducted." It is understood that from 2015, the Decree 12/2015/ND-CP provides a broader stipulation on the taxable income arising in Vietnam of the foreign enterprises without a permanent establishment in Vietnam which is the income sourced from Vietnam from business activities including capital transfer. Currently, Vietnam is taxing indirect capital transfer transactions on the principle that incomes sourced from Vietnam are subject to tax in Vietnam. With such principle, in many cases where (i) the transfer of capital is for the purpose of transferring the company in overseas (and the Vietnamese company is indirectly owned by the transferred company and accounts for a relatively small portion in the entire transaction), or (ii) the transfer of capital solely for the purpose of corporate restructuring, or (iii) the transactions of buying and selling shares of the parent company in overseas are conducted via a foreign stock exchange, all are considered as a capital transfer transactions which are subject to tax declaration and payment in Vietnam. From 2016 up to now, the General Department of Taxation has issued a number of official letters providing guidance on "indirect capital transfer" (i.e. transfer of capital in the parent company of a company in Vietnam), for example Official Letter No. 766/ TCT-DNL dated 29 February 2019, Official Letter No. 866/TCT-CS dated 2 March 2020, Official Letter 4950/TCT-TTKT dated 19 November 2020, which confirm that indirect transfer of capital are subject to CIT in Vietnam. However, pursuant to the current stipulations in the Decree 12/2015/ND-CP and in the above-mentioned guiding official letters, the method of determining taxable income or tax calculation method applied to foreign enterprises having indirect capital transfer activities are not specifically mentioned, leading to difficulties in practice for the enterprises to properly determine the tax obligations as well as to declare and pay taxes.	• For a few countries that tax these transactions, the tax is imposed if the transaction meets certain conditions (for example, the parent company was established solely for the purpose of holding capital in a subsidiary; the value of the subsidiary exceeds a certain percentage of the total value of the parent company's assets; etc.). Examples: **Thailand**: Income from indirect capital transfers is not subject to tax. **India:** Only being taxed if the subsidiary in India accounts for a majority (more than 50%) of the value of the Parent Company - the company of which the capital is transferred. **China:** Only being taxed if the offshore capital transfer is deemed as not following the normal commercial principles and solely for the purpose of tax avoidance. For instance: - At least 90% of the assets (excluding cash) or income of the foreign parent company is formed from the investments in China; - At least 75% of the value of the shares of the foreign parent company is formed from the assets of the subsidiary in China; - The activities and risks of the parent company and its direct or indirect subsidiaries are insignificant and not sufficient to justify the economic aspect.

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		We kindly request that the Ministry of Finance issue specific regulations and guidelines for indirect capital transfer transactions. At the same time, the Ministry of Finance should also consider exceptions to be in line with international practice, for example: • Transactions of trading shares on an overseas stock exchange market where the Parent Company or the Ultimate Parent Company is listed; • Internal group restructuring that does not change the capital structure of the involved companies; • The minimum level (in terms of the transfer value and/or the capital ratio) to be subject to tax. In light of the above, we recommend that consideration should be given in the new Law on CIT so that "Clause 2, Article 3. Taxable income" would be supplemented or amended to provide more specific provisions for cases subject to indirect capital transfer as well as additionally supplementing guidelines for exclusions.
55	Regulations on deduction of expenses for the employee's work stoppage wage paid by the employer arising through no fault of the employee during the work stoppage period According to the provisions of Article 99 of the Labor Code 2019, employees and employers are entitled to agree on a stoppage wage for employees. According to the provisions of Point 1, Article 4, Labor Code 2019, the State also encourages employers to pay more benefits to employees. However, the provisions on expenses that do not correspond to taxable revenue deducted from tax specified in Point 2.31, Article 6, Circular 78/2014/TT-BTC do not mention the salary stopped being paid to employees as prescribed in the Labor Code.	In essence, it is necessary for businesses to pay this to retain workers when it comes time to resume production, avoiding wasting recruitment costs and opportunity costs during this time. Workers also need wages to pay for life while waiting to be called back to work. The company and employees also commit to declare and pay all PIT and compulsory insurance for stoppage wages similar to income from salaries and other allowances of employees. For wages incurred during the social distancing period, work waiting time due to the impact of the Covid epidemic, the Hanoi Tax Department has issued official letter No. 89924/CT-TTHT stipulating that expenses are deducted when calculating CIT.

No.	Issue	Recommendations
		Therefore, based on the above contents, we propose the tax authority specified in Point 2.31, Article 6, Circular 78/2014/TT-BTC to deduct the actual salary cost spent for employees, which has been declared and fully paid PIT as well as compulsory insurance according to current regulations during the work stoppage period as stipulated in the Labor Law to ensure the benefits of employees and employers.
56	Salary expenses of unused annual leave days Point 3, Article 113, Labor Code 2019 stipulates the payment of wages for the employee's unused leave days only including 2 cases: severance and job loss. However, Point 1, Article 4, Labor Code 2019 also stipulates that the State encourages agreements to ensure that employees have more favorable conditions than prescribed by law. Currently, the provisions on expenses that do not correspond to taxable revenue are deductible as prescribed in Point 2.31, Article 6, Circular 78/2014/TT-BTC does not mention the deduction for salary expenses paid for unused leave days for employees as prescribed in the Labor Code. In official letter No. 468/TCT-CS, the General Department of Taxation has instructed the payment of unused leave days of employees to be deducted if they meet the CIT regulations (Circular 78/2014/TT-BTC and Circular 96/2015/TT-BTC) and stipulated in the Labor Law 2019. However, there are still many opposing views on this issue from agencies under the Ministry of Labor, Labor and Social Affairs (such as according to Official Letter No. 514/ATLD-CSBLD of the Department of Labor Safety instructing enterprises to "encourage agreements to ensure that employees have more favorable conditions than prescribed by the labor law"; meanwhile the Official Letter 344/LĐLĐ-TC of the Ho Chi Minh City Confederation of Labor instructs enterprises to comply with Clause 3, Article 113 of the Labor Code 2019, specifically, enterprises paying wages for unused leave days will be paid when employees lose their jobs or quit their jobs). Therefore, it leads to inconsistent handling of the validity of the expense when recorded as a deductible cost.	On the basis that the State encourages more favorable agreements for employees in the enterprise, we propose to supplement the provisions of Point 2.31, Article 6, Circular 78/2014/TT-BTC allowing the deduction of salary costs paid for the employee's unused leave days as agreed between the employee and the employer (not restricted by only 2 cases of severance, job loss at Point 3, Article 113, Labor Code 2019).
57	**Determination of place of service consumption in case of application of 0% VAT rate** 1. The tax rate of 0% applies to exported goods and services, international transportation and goods and services not subject to value-added tax specified in Article 5 of the Law on Value-	In our opinion, it is very difficult to include specific cases that are considered consumption outside of Vietnam in a Decree or Circular. Therefore, in order to simplify tax

No.	Issue	Recommendations
	Added Tax and Clause 1 Article 1 of Law amending and supplementing a number of articles of Law on Value-Added Tax upon exportation, except goods and services specified at Point dd of this Clause. The exported goods and services are goods and services sold and supplied to foreign organizations and individuals and consumed outside Vietnam, in non-tariff areas; goods and services supplied to foreign customers as prescribed by law. a) …. b) **Exported services include services provided directly to overseas organizations or individuals or organizations and individuals in non-tariff areas and consumed outside Vietnam, consumed into non-tariff areas.** Unlike goods that are easy to determine where to consume and use, determining where to consume services is not simple. In fact, the application of the 0% tax rate to services provided to foreign individuals and organizations depends on the tax authorities' subjective interpretation of where the service is consumed. In most cases, the tax authorities take the view that the place where services are provided is also the the place where services are consumed. Given the silence of any specific regulations, taxpayers cannot be sure which cases the tax authorities accept as consumption outside Vietnam and which cases are not accepted as consumption outside Vietnam. As a result, there are very few cases of services provided to foreign organizations and individuals that can apply the tax rate of 0%. This provision therefore has almost no practical significance.	administration as well as be in line with international practices, for export services, the conditions for applying the tax rate of 0% should be limited to the conditions of services provided to foreign organizations, individuals or individuals or organizations in non-tariff zones and are paid via banks by foreign individuals or organizations from abroad or by individuals and organizations in non-tariff zones from their bank accounts of individuals, organizations in the non-tariff zone. Because the condition "consumption outside Vietnam" is stipulated in the Law on VAT, in order to avoid the need to amend the law, the MOF may consider amending Article 6.1.b) of the Decree as follows: "b) For export services, including services provided directly to overseas organizations or individuals for consumption outside of Vietnam, consumption in a non-tariff zone, or services provided directly to organizations or individuals in a non-tariff zone and consumption in a non-tariff zone. Consumption outside Vietnam means a service provided to an overseas organization or individual or to an organization or individual in a non-tariff zone and are paid via banks by foreign organizations and individuals from abroad, or by organizations and individuals in non-tariff zones via banks."
58	Article 3.2.dd Decree 209/2013/ND-CP regarding debt sales activities lacks specific regulations regarding performing debt sales activities, expanding to cases of selling payables and selling receivables when enterprises have mergers and acquisitions activities. In addition to the provisions in Article 3.2.dd of Decree 209 on debt sale activities that are not subject to VAT, the current law does not have specific guidance on (i) what activities are included in debt sales activities, (ii) whether the sale of debt includes both the sale of payables and receivables, and (iii) the sale of debt by which entity is not subject to VAT (for example, the sale of debt by credit institutions or businesses that are not credit institutions). As a result, it is difficult to apply the law in practice.	Transferring accounts payable/receivables are becoming more and more popular due to the need to restructure the business. Therefore, it is proposed to amend Article 3.2.dd) as follows so that taxpayers have a basis to apply appropriate law to these transactions: **Article 3.2.dd) Non-taxable subjects** 2. A number of services specified in Clause 8 Article 5 of the Law on Value-Added Tax and Clause 1, Article 1 of the Law amending and supplementing a number of articles of the Law on Value-Added Tax are prescribed as follows:

No.	Issue	Recommendations
	Specifically, the problem that businesses often experience in practice is the VAT rate applied to the sale of payables and receivables between businesses (including between credit institutions or between non-credit institutions).	... dd) Sale of debt **(including sale of payables and receivables of enterprises).**

POSITION PAPER OF EDUCATION & TRAINING WORKING GROUP

Introduction

In this paper we have reviewed the current situation, in the education and training environment in Vietnam, and addresses a number of specific sectors and issues. These include:

1. K - 12 education *(a legal framework is required regarding the recognition of professional qualifications of foreign teachers)*
2. TVET *(Adjust vocational training activities, focus on necessary skills to effectively implement the Industry 4.0)*
3. Higher Education *(need an open legal framework to allow the opening of training disciplines that Vietnam does not have and an open policy to attract skilled labor)*
4. English as a Second Language (ESL) *(modify qualification requirements which require certification of language proficiency from English teachers)*
5. The Digitization of Learning (Education 4.0) *(build a legal framework for the recognition of online learning modules)*
6. The Skills Gap *(training programs need to incorporate practical skills)*

All sectors of the education system need to review their strategies to deliver effective education in light of the current and future environment. This is critical to the development of the Vietnamese economy both now and in the future. We would like to reiterate that Government agencies (both local and foreign), educational institutions, and industry need to collaborate to take advantage of current opportunities and mitigate or remove risks.

1. K - 12 education

In an environment that is greatly affected by the COVID pandemic, the challenges currently being faced in obtaining and renewing work permits are exacerbating the risk of the sustainability and the quality education offered. Difficulty in applying for a work permit extension because the regulations on professional qualifications in Vietnam are not compatible with other countries' requirements, leading to the inability to issue or renew work permits. This will potentially lead to the exodus of foreign experts as they search for greater security and stability.

VBF Education & Training WG recommends that in order to ensure the quality and sustainability of education in Vietnam, it is imperative that we recruit and retain foreigners with internationally recognised qualifications. If the global perception is negative and work permit challenges continue, this will have a long-term impact on recruiting the best talent that can continue to build and support a globally competitive workforce in Vietnam.

2. 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 organizations including, but

not limited to Asian Development Bank (ADB), German Dual Vocational Training (GDVT), Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), international Labour Organisation (ILO) and Japan International Cooperation Agency (JICA), is through the initiation of active collaboration measures by the TVET institutions.

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.

3. Higher Education

The following are some recommendations that should be considered in order to enhance the role of higher educational institutions in supporting the business community in Vietnam to achieve rapid and sustainable development:

- It is necessary to have a legal framework to allow the opening of training industries, especially high-tech industries that Vietnam does not yet have for global integration.
- In order to improve the quality of training, Vietnam needs to strengthen international cooperation in education and training, have policies to attract skilled labor such as inviting professors and doctors from overseas universities to Vietnam to teach periodically or for less than 12 months and do not have to apply for work permit (Article 57 of the Law on Higher education allows university to invite highly qualified lecturers but Decree 152/2020/ND-CP stipulates that all foreign workers entering Vietnam for more than 3 months must apply for a work permit. These two regulations are not compatible making it impossible for universities to invite foreign professors to Vietnam).
- Complete a regulatory framework for quality control of online learning: Regulatory authorities need to recognize e-learning as a viable learning option. Regulators need to ensure a future-oriented ecosystem for the Education 4.0 model and coordinate with higher education institutions to finalize the regulatory framework for quality control, accreditation and information security. Online self-study should be encouraged when possible by communicating its value to one's career development.

VBF Education & Training WG recognizes that it is important to work with local universities on workforce development and to help them connect with companies. We would like to work in partnership with MoET potentially through an Advisory Board.

4. English as a Second Language (ESL)

In a country where tourism is a significant industry and, in a world, where English is one of the most common languages of commerce and industry, English language skills development of Vietnam's youth is critical. Continue the emphasis on English Language skills development of students in local schools.

The demand for qualified English teachers in Vietnam is very high and the contributions made by foreign teachers in language centres, Vietnamese schools, bilingual and international schools is significant. Native English teachers from around the world provide students from all backgrounds with access to the language and cultural understanding.

While we appreciate the focus on teacher quality, this criteria disqualifies English teachers possessing an English teaching certificate, years of experience but not a degree majoring in English language. We would request that this (Circular 21/2019/TT-BGĐT) be reconsidered and that teachers with a recognized English language teaching certificate be recognized regardless of their undergraduate studies major. No additional certificates of language proficiency are required if the teacher is from a non-English speaking country because the English teaching certificate already ensures sufficient English proficiency to teach. This will allow Vietnamese students to benefit from sufficient numbers of qualified teachers to help prepare them for a global economy through language learning and cultural exposure.

5. The Digitisation of Learning (Education 4.0)

To encourage the continued development of Vietnam's economy, the upskilling of its future labour force is highly recommended. This can be done through partnership between public education institutions and private international education institutions providing teacher training for teachers working in the public-school system. Online or blended educational programs (combining online learning with face-to-face studies) for training of Vietnamese teachers in the public-school sector would further develop local teachers with the international-standard skills needed to develop students who are lifelong learners, equipped with the expanding skills necessary for future careers in emerging industries.

In addition, the implementation of digitization of education offers potential for the development of skills across the workforce. However, regulations must allow online components to learning and qualifications to be further recognized.

Technology has and will increasingly play a major part in defining what the future environment for education will look like. 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. The benefits of effectively digitizing 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 personalized 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.

6. The Skills Gap

The ongoing economic restructuring towards market orientation and global integration will require further development of human resources in Vietnam. There are labour shortages in many companies unable to find qualified workers to take up unfilled positions in emerging sectors. A key issue in Viet Nam as well as in other countries in the Asian region is this serious mismatch between the education, skills, and experience needed to find and keep a job and the content of formal educational and training qualifications. We encourage the upskilling of Vietnam's future labour force by partnership between public education institutions and private international education institutions.

Most children in school today will be entering into jobs that are unknown to us today. Educational institutions have the responsibility to enable individuals to be future ready and reduce their rate of obsolescence. Some proposed recommendations are as follows:

- 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.
- Employers should move away from checklist-based recruiting to more modern methods to determine if candidates can do modern jobs - such as aptitude testing, psychometrics and behavioral based interviews
- 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.

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.

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POSITION PAPER OF HR WORKING GROUP

EXECUTIVE SUMMARY:
OVERVIEW REPORT ON HR WORKING GROUP'S WORK PROGRESS

FOREIGN WORK PERMITS AND BUSINESS VISAS

- Green and sustainable development will involve international skills, investment and technology transfer into Vietnam. For this to happen effectively, foreign business visitors and skilled workers should be able to come to Vietnam and the process could be streamlined and simplified.
- The business community would recommend some suggested steps that would ensure:
  - more clarity and consistency of administrative procedures
  - more time for companies to anticipate and plan ahead to prevent operation disruptions and causing sudden problems for their foreign employees and their family
  - allowing immigration professionals authorized by the sponsoring companies to handle administration for sponsoring companies
  - clarifying the foreign labor approval process as this has recently become much harder for companies
- We would also appreciate clarification on the new regulations on labor representatives

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

1. Clarification on Work Permits

Today's immigration and work permit environment is much different (and much more challenging) than the "Old Normal". It was our hope that once Vietnam reopened in early 2022, we would see some stability and return to some of the pre-pandemic environment which was relatively more straightforward and reliable. Unfortunately, the opposite has happened.

Unclear timelines for project starts, difficulties retaining existing foreign workers due to foreign labor demand approval and work permit renewal requirements, delays in getting new workers to Vietnam, are just some of the issues companies in Vietnam have been facing in the new normal. We have had many discussions with leaders of some of the biggest manufacturers in Vietnam to long term foreign business owners, who are all, extremely concerned about these same exact challenges.

Here are the main new visa and work permit changes that have negatively impacted companies, large and small ones, and which need to retain, assign and employ foreign nationals:

- Changes of procedures and processes have been applied without any prior notice which is very hard for company to adapt and anticipate issues. Some of the changes were applied without any written notice across Immigration bureaus (for visa) and across provincial DOLISA (for foreign labor demand and work permit approvals)

- Companies are now struggling to obtain entry business or even work visa in due time due to the current process and that has significantly impacted many businesses' operations. This is mostly due to the increasing complexity and administration burdens that a visa application to Vietnam currently involves:

    - The requirement that the submitter to lodge a visa application to be **an employee of the sponsoring company** is a major problem in the current context and especially when the submitter may have to wait for several hours just to get a ticket and often comes back again to the immigration bureau for the actual submission. This is particularly challenging when the company is located in a province far away from Hanoi or HCMC where entry visa application would be submitted.
      Many large MNCs use a global vendor to manage their Immigration needs worldwide, which uses local service providers in Vietnam to assist the company and the applicant in Vietnam with the application preparation and application but service providers with proper documentation that authorizes them to submit visa application on behalf of the company are literally being kicked out from the Immigration bureau. In addition, the authorities request the company submitter to show their Vietnam social security identification. For a newly established entity this very problematic as either no local staff yet or still on probation so no social security identification yet.

    - Another issue is that the approval for visa endorsement on arrival has become impossible to obtain in most cases and the **visa endorsement through the Vietnamese embassy/consulate in overseas** is often very challenging for the applicant (very hard to get in touch with anyone from the Vietnamese embassy/consulate on the phone, lack of information on the website, confusing or

not updated information, unclear process and processing time and often unprofessional...). Several members have raised concerns over the complicated and sometimes unclear and unprofessional attitude of the embassy/consulate's staff to get their visa endorsed at the Vietnamese embassy abroad. An recent member has a case where the business visa application was successfully lodged and approved by the immigration bureau with visa endorsement at the Vietnamese embassy in Singapore. The visa pre-approval letter was faxed to the Vietnamese embassy in Singapore for endorsement but the Singapore Vietnamese embassy rejected without any explanation and applicant was told the paperwork is incomplete which was not true. The applicant returned the next day, insisted the visa pre-approval letter from the Immigration bureau is legitimate and was given the visa, again with no explanation as to why that wasn't issued a day before. In many other cases, the visa pre-approval letter that is faxed by the Immigration bureau to the Vietnamese embassy/consulate abroad is not received successfully or lost which significantly delays the obtaining of the visa and therefore impact travels and business schedules.

- Many **Business visa are now only granted for up to 29 days**. With the stricter requirements for foreign labor demand and work permit and delays arising, this causes lack of flexibility and forces foreigner travelling back and forth to Vietnam. Business visa can no longer be extended even for a very short period of time like 1 or 2 weeks resulting in forced departure for a new challenging visa application process and re-entry.

- **Visa processing time** at the Immigration bureau in Hanoi and HCMC to obtain the visa pre-approval letter is now 7 to 10 working days vs about 3 days before the pandemic. Additional timeline required for the visa endorsement at the Vietnamese consulate/embassy abroad varies between 1 to 7 working days => too many uncertainties on the exact possible business travel plan for the applicant.

- **Labor related issue:** Overall timelines before the pandemic for a company to prepare and obtain a foreign labor demand approval + a work permit was 2 to 3 months. It is now often 4 to 5 months particularly due to lengthy process to obtain the foreign labor demand approval.

- **Foreign labor demand**: It has become more and more complicated to obtain this approval especially in HCMC and some southern provinces. Before the pandemic it usually took about 3 to 4 weeks to obtain the foreign labor demand approval. Now it may takes up to 3 months. About 90% of new and renewal of foreign labor demand by companies in HCMC are being challenged and systematically rejected by DOLISA at the first stage and may take up to 3 months to obtain. The paperwork required is extremely cumbersome and unclear to force companies to further explore using Vietnamese labor vs foreign labor. Unfortunately this is not efficient and it significantly disturbs companies' operations due to the significant lack of skilled local workforce. Judgment by DOLISA on rejection of foreign labor demand requests are often unfounded as they often do not understand the needs that companies have on foreign labor demand and the challenges that they have recruiting locally. Dolisa are also unclear on what supporting documentation they need to eventually grant approval. Without foreign labor demand approved, no work permit application can be submitted.

- Foreign labor demand are granted for 2 years (like work permit). Renewals of foreign labor demand cannot be submitted to DOLISA more than 45 days prior to expiry. Approval is not granted before 30 days which leaves only 15 days window to submit and obtain the work permit and renew work visa or temporary residence cards for foreigners who are

living in Vietnam and their spouse and children who attend school. When the foreign labor demand is rejected, the family cannot extend their visa and are forced to leave Vietnam to re-enter as there is no flexibility on extension even for short term.

- Requirements, processing timelines, and rejections have increased across the board and have impacted all companies (no matter what the size).

2. Guidance requested on labor representatives

Businesses and laborers would like to utilize "Tổ chức của người lao động" to make labor relation management at businesses more efficiently and effectively. Under the new labor law, (45/2019/QH14), new labor organization as "Tổ chức của người lao động (Điều 172)" is being implemented. According to explanation about "Tổ chức của người lao động", meaning or function of "Tổ chức của người lao động" is very much similar with labor union. It is stipulated that the "Tổ chức của người lao động" can choose whether the "Tổ chức của người lao động" will join labor union or not (Điều 172.3). Further, it is stipulated that detail procedures and regulations will be issued by government (Điều 172.4).

We would therefore request detailed decrees regarding "Tổ chức của người lao động". The detailed decree should clearly ensure employees' rights to make decision on whether employee will establish "Tổ chức của người lao động" or not, whether "Tổ chức của người lao động" will join labor union or not and whether and which labor organization to join. We suggest that because the function and meaning of labor organization is very much the same between "Tổ chức của người lao động" and labor union. When the business has "Tổ chức của người lao động", any fee for labor union should be exempted both from employees and business.

POSITION PAPER OF TOURISM WORKING GROUP

TOURISM DEVELOPMENT IN VIETNAM: HOW TO ATTRACT MORE VISITORS

Tourism is one of the major sectors of Vietnam's economy, contributing over 9% of its GDP. However, due to the impact of the COVID-19 pandemic, international arrivals have declined sharply since 2020. To recover from this crisis and boost its tourism potential, Vietnam needs to implement some policy changes and improve its service quality. Here are some suggestions:

- Improve visa policy: One of the barriers for foreign tourists to visit Vietnam is its complicated and restrictive visa policy. Currently, only 24 countries are eligible for visa exemption for up to 15 days, while others have to apply for an e-visa or a visa on arrival. The visa exemption period is too short for many visitors who want to explore the country's diverse attractions, while the e-visa and visa on arrival processes can be time-consuming and inconvenient. To make it easier and more attractive for visitors, Vietnam should extend the visa exemption period to 30 days, increase the list of visa exempt countries to all of Europe, Australia, New Zealand, USA and Canada, increase the number of countries for e-visa application (currently 80), and offer long-stay visas for 3 and 6 months for those who want to explore the country more deeply, including targeting the high spending elderly market. These measures would encourage more tourists to choose Vietnam as their destination and increase their spending and satisfaction levels.

- Improve service at airports: Another challenge for tourists is the long waiting time at immigration checkpoints at international airports, in particular Ho Chi Minh City and Hanoi. This can cause frustration and inconvenience, especially for families with children or business travelers who have tight schedules. To solve this problem, Vietnam should add special lanes for these groups of passengers, as well as increase the number of immigration officers and scanners. In addition, the design and look of immigration counters and areas, which is often the first touch point for a foreign visitors, do not look welcoming and rather intimidating. Countries such as Thailand or Singapore have are good examples of how friendlier uniform, better trained immigration officers and more colorful immigration areas can boost tourism as it conveys a friendly and welcoming attitude to foreign visitors. These improvements would enhance the efficiency and convenience of airport services and create a positive first impression for tourists.

- Remove hospitality workers from Decision 2447/QĐ-BYT: A recent decision issued by the Ministry of Health requires all hospitality workers who have direct contact with customers to wear masks at all times. This can affect the quality of service and communication between staff and guests, as well as create a sense of distance and distrust. According to a study by Cornell University's School of Hotel Administration, facial expressions play an important role in customer satisfaction in hospitality settings. Therefore, Vietnam should remove hospitality workers from this Decision and allow them to show their faces while serving customers. This will create a more friendly and welcoming atmosphere for tourists.

By implementing these measures, Vietnam can enhance its tourism development and attract more visitors from around the world. Tourism is not only a source of income but also a way of promoting cultural exchange and mutual understanding between nations. Therefore, Vietnam should seize this opportunity and showcase its beauty and diversity to the world.

POSITION PAPER OF MINING WORKING GROUP

1. PRESENT POSITION

As the Mining Working Group has stated at previous Forums, Vietnam is rich in mineral resources, but only a fraction of these valuable assets have been discovered to date, due to the country never having been systematically explored using modern technologies and methods, such as airborne geophysics and deep penetration technologies to locate more deeply buried deposits. Furthermore, Vietnam's existing near-surface mines that are operated by state-owned enterprises have not yet attracted FDI and with it world best practices to mine and process the minerals with the environmentally sustainable green technologies needed to significantly contribute to Vietnam's COP26 pledges on reduction of carbon dioxide emissions.

However, Mining Working Group participants are managing to attract FDI, best practices and advanced technologies to Vietnam to prove up some of its base metal resources, and crucially with plans to process, and where practical to re-cycle and refine, such metals within Vietnam utilizing state-of-the art technologies to significantly reduce and ultimately eliminate carbon dioxide emissions - such as pressure oxidation technology, green hydrogen technology, electrification of all mine fleets and use of renewable hydro-power and hydro-metallurgy in mine operations and downstream processing.

Unfortunately, lack of coordination and communication among the various Vietnamese ministries and departments involved in exploration and mining, both at central and provincial level, is currently frustrating Mining Working Group participants. Shortcomings in the Vietnam Mineral Law itself, which is currently being re-drafted and can hopefully be improved, and excessively high taxes and royalties compared to other countries, are also significant deterrents in developing an efficient mining industry in Vietnam. Some of these issues are briefly addressed later in this Position Paper.

2. BENEFITS OF TECHNOLOGICALLY MODERN EXPLORATION AND MINING IN VIETNAM

Environmentally sustainable, modern mining in Vietnam can, apart from helping meet the Vietnamese Government's pledges under COP26, contribute to:

- meeting the challenges of the Government's strategy for its Socio-Economic Development Goals (SDGs), particularly in the areas with dominantly ethnic minorities, where the mining projects are mostly located; and

- significantly improving physical infrastructure which is high on the Government's important objectives.

  Mining has long been recognized to be one of the most effective drivers of physical infrastructure improvement around the world. The areas where mineral deposits are found tend to be in the more mountainous, and therefore usually the poorest socio-economic and ethnic minority parts of a country, and this certainly applies to Vietnam. The other obvious benefit of responsible mining is the contribution it can make to help alleviate poverty in the remote areas in which it operates by creating strong employment opportunities and orders for local goods and services.

  Modern sustainable mining in Vietnam would therefore also clearly meet two of the World Bank's stated key objectives of its Country Partnership Framework in Vietnam

which are to (a) deliver infrastructure and (b) broaden the economic participation of ethnic minorities; and thirdly

hopefully providing models for modern world best technologies that should be followed by mainly Vietnamese state-owned enterprises, which need to significantly improve their efficiencies, safety, environmental sustainability, etc.

3. BENEFITS OF MINING & PROCESSING MINERALS IN VIETNAM'S FAST GROWING ECONOMY

Metals such as tungsten, iron and alumina are currently being mined in Vietnam on a large scale in near surface deposits, but Vietnam is also rich in other metals that are only now being discovered and developed using modern technology - metals such as copper, nickel, cobalt and rare earths.

These metals are currently being sought by the Mining Working Group participants and are all essential in the production of electric vehicles, lithium-ion batteries, wind turbines and solar panels etc. Having these metals sourced and available within Vietnam, instead of importing them, provides the country with the opportunity to develop downstream high-tech manufacturing industries and establish Vietnam as a dominant regional or even world hub for the manufacture of these products, now highly sought after for a carbon neutral future. This clearly is in line with the MPI Foreign Investment Agency's emphasis on capacity building of manufacturing and supporting industries in Vietnam and partnership with Vietnamese enterprises where possible.

To emphasize this point, the Vietnam General Statistics Office recently reported that eight Vietnamese-produced commodities exceeded US$10 billion in export value in 2022. Four of these eight commodities are dominantly metallic, being 1) mobile phones and spare parts; 2) electronics, computers and components; 3) machinery, equipment and spare parts; and 4) vehicles and spare parts.

4. CHALLENGES AND ISSUES

A) CONSULTATION AND CLARIFICATION

The Mining Working Group seeks increased detailed industry consultation on the key components of the Vietnam Mineral Law, which is currently being re-drafted, together with associated guideline circulars. For example, key mining taxes require transparency on how minerals are valued. Mineral grade is not an acceptable methodology, as mineral recoveries, mining costs, metal prices and changing mining parameters etc also need to be considered. Project economics are significantly impacted by the compounding of element taxes, particularly where a deposit is determined to be poly-metallic despite some of the associated minerals being uneconomic. A possible solution is moving to a revenue-based system.

Since the last Annual VBF in February 2022, MOIT has issued a draft nickel sulphide concentrate standard that should have provided a good opportunity for consultation to obtain feedback from the mining industry. However, consultation before the draft standard was issued was limited to nickel producers within Vietnam and some Vietnamese industry figures, with a focus only on publicly available documents. There was therefore very limited exposure to the international commercial realities of commodity marketing and contracts, input from international experts, and evaluation of the approach of other countries regulating nickel mining and processing. Also lacking has been an understanding by the Mining Working Group of the purpose of the standard - it is unclear if the standard is to be used to restrict import or export,

used as part of a review of royalties or duties, related to future approval of mining licenses or any other specific purposes. This is just one example of the need for Vietnamese authorities to consult more with the international mining community.

B) MINING INDUSTRY LONG TERM INVESTMENT AND RISK

The mining industry is atypical of traditional manufacturing and services industries, because it requires long-lead time and significant investment upfront on exploration and development before any project can become successful. Discovery of some types of major mineral resources in the Asia-Pacific region have taken an average of 18 years from commencement of exploration to discovery of an ore grade deposit. Therefore, in order to attract quality Direct Foreign Investment into mining, the Mining Working Group requests the Government to:

a) Benchmark Vietnam's fiscal regime against peer countries and provide a fiscal regime competitive with those offered by other jurisdictions;
b) Simplify the current fiscal regime for ease of explanation to investors;
c) Provide fiscal stability and reduce frequency of policy changes due to the long lead-time of mining projects; and
d) Continue improving internal standards and consider recognizing and adopting international mineral resource standards (e.g. JORC).

Exploration investment often faces many risks, especially in conditions of mineral resources at great depth in the ground and in areas with complicated geological conditions. The Government must ensure that exploration and mine planning, the formulation of investment projects, and the development of mechanisms and policies will encourage exploitation rationally and with best efficacy. Companies that have a proven history of conducting technically advanced and environmentally responsible exploration programs must have subsequent applications fast-tracked. Ongoing exploration is the key to sustainability in mining projects.

C) SCIENTIFIC RESEARCH AND TECHNOLOGICAL DEVELOPMENT

In October 2021 at a series of ASEAN Ministerial Meetings on Minerals, MONRE Minister and now recently appointed Deputy Prime Minister HE Tran Hong Ha suggested that the minerals industry must take the lead in digital transformation, scientific research, technology development, and investment in all stages of the mineral value chain.

Unfortunately, Mining Working Group participants and foreign invested mining companies have been hindered in the testing and application of new technologies by restrictions in temporary import into Vietnam of research piloting equipment. Also, detailed studies of various ores at world class research facilities is limited due to the inability to export samples out of Vietnam for study purposes.

Perhaps this can be partly offset by increasing Government funding for Vietnam research facilities, but such import-export restrictions need to be relaxed.

D) REWRITING THE VIETNAM MINERAL LAW and REDUCTION OF MINERAL TAXES

Unfortunately, unlike many of Vietnam's ASEAN neighbours, none of the world's largest mining companies are presently operating in Vietnam. This is because the natural resource tax in Vietnam is one of the highest in the world and the fee for granting mining rights attracts even

greater taxes.. Vietnam needs to introduce a fiscal regime that is competitive with those offered by other jurisdictions.

At the Annual VBF Forum in February 2022, Mr Le Van Huu, Deputy Director-General of Finance Department, MONRE stated MONRE wanted to focus on the issue of the high mineral tax. This is a big issue for MONRE, but will have to be decided by the National Assembly.

The review and revision of Vietnam's 2010 Mineral Law must be open and consultative, allowing the opportunity for input from Vietnamese and FDI mining companies and international mining experts through regular submissions and industry workshops. The Mining Working Group looks forward to participating and contributing to these workshops, so that clean, environmentally sustainable mining can be a significant part of Vietnam's impressive economic growth.

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