CHAPTER 19 **WINE AND SPIRITS**

OVERVIEW

Vietnam's economic growth, at 6.2% in 2016 and 6.81% in 2017, was among the strongest in the world. However, public debt pressures have prompted authorities to set ambitious targets to reduce the budget deficit: the Government and the National Assembly have promised to rein in the deficit over the medium term. This will be achieved by gradual fiscal consolidation which strikes the right balance between revenue raising and spending cuts. This will be challenging, and will require deeper tax reform, better revenue administration and much more efficient public spending, according to the Asian Development Bank.[1] Due to budget-deficit issues, the Ministry of Finance (MOF) will continue managing tight tax compliance and State budget collection by increasing tax inspection and audit, monitoring transfer pricing and tax evasion, and detecting tax under-declaration and fraud.

Raising productivity, increasing competitiveness and improving the business environment continue to be the Government's top priorities. However, Foreign Direct Investment (FDI) could suffer as the tax and regulatory environment for business still requires significant improvement.

We welcome the promulgation of Resolution 35/NQ-CP dated 16 May 2016 of the Government supporting and developing enterprises until the year 2020 (Resolution 35) and the annual Resolution 19/2017/NQ-CP dated 6 February 2017 of the Government on major tasks and solutions to improve the business environment and enhance national competitiveness (Resolution 19). Both contain solutions related to access to resources and cost efficiency for businesses.

Market overview: Vietnam is listed among the world's top ten highest beer consuming countries. In 2016, Vietnam produced 3.78 billion litres of beer, up 9.3% against 2015 and 40.72% against 2010. The Saigon Alcohol Beer and Beverages Corporation is the biggest producer of beer in Vietnam, with a total of 1.6 billion litres in 2016. That was followed by Hanoi Alcohol and Beverages Corporation, with 717.4 million litres. The rest came from other producers such as Heineken and Carlsberg. The beer sector in Vietnam has set a target of producing 4.1 billion litres by 2020 and 5.5 billion litres by 2035. Beer accounts for 94% of the commercial alcoholic beverage market in Vietnam.[2]

The formal spirits market was estimated at more than 4.77 million nine-litre cases – about 43 million litres – in 2016.[3] Meanwhile, the formal wine market was estimated at around 1.62 million cases – about 14.6 million litres.[4] Home-made alcohol was estimated at around 275 million litres.[5] According to World Health Organisation (WHO) data, unrecorded (untaxed and unregulated) alcohol amounts to more than 70% of the alcohol consumed in the country.[6]

The population of Vietnam is growing quickly and is fast approaching 100 million people. Every year, a million new consumers enter the legal-drinking-age bracket.[7] Meanwhile, Vietnam's middle class has doubled to 33 million people, and that growth in disposable income is creating stronger consumer demand.

The European Union (EU) wines and spirits industry supports the Government's commitment to international integration: greater liberalisation will encourage further strong economic growth in Vietnam. The EU-Vietnam Free Trade Agreement (EVFTA), expected to come into force in 2018, will facilitate the market access of EU wines and spirits to Vietnam. This will bring about positive changes in the liquor production and trading regime, the

1 "Asian Development Outlook 2017 Update: Sustaining Development through Public-Private Partnerships", *Asian Development Bank*. Available at: <https://www.adb.org/sites/default/files/publication/365701/ado2017-update.pdf> accessed on 5 December 2017.

2 "Vietnam beer consumption to top 4 billion litres this year" *Vietnam Net*, 20 April 2017. Available at: <http://english.vietnamnet.vn/fms/business/176901/vietnam-beer-consumption-to-top-4-billion-litres-this-year.html> accessed on 8 December 2017.

3 "Country Volume Report", *International Wine and Spirits Record (IWSR)*, June 2017. Available at: <http://www.theiwsr.com/iwsr_core_reports.html> accessed on 5 December 2017.

4 *Ibid.*

5 "Assessment on status and proposals on management food safety of some traditional alcohol products" *Vietnam Ministry of Health*.

6 "Global status report on alcohol and health 2014" *World Health Organisation*. Available at: <http://www.who.int/substance_abuse/publications/global_alcohol_ report/profiles/vnm.pdf> accessed on 8 December 2017.

7 *Op.cit.* IWSR Report 2017.

strict enforcement of European brand protection and Geographic Indications (GIs), as well as a reform initiative to simplify administrative measures and to harmonise the technical regulations with international practices.

EVFTA: The EU and Vietnam are working on the final preparations before the EVFTA can be ratified. Wines and Spirits Sector Committee (W&S SC) has always supported this agreement, as the gradual alleviation of the tariff barrier should support the import of tax-paid wines and spirits. This will reduce economic incentives to smuggling and other informal activities and benefit legitimate businesses, Government revenue and the health of Vietnamese consumers. However, the anticipated benefits from tariff cuts negotiated under the EVFTA are compromised following successive reforms to the Special Consumption Tax (SCT). These reforms have greatly impacted EU wine & spirits exporters to Vietnam, and the overall tax burden (which has, in some instances, more than doubled) puts the sustainability of our industry in Vietnam at risk.

W&S SC would like to understand more and to participate in the 'domestic advisory groups' mechanism for the EVFTA. We appreciate the opportunity to discuss with relevant authorities developing legal documents implementing Rules of Origins (ROO) principles established in the EVFTA for getting the agreed tariff concession where EU wines and spirits are shipped directly to Vietnam or indirectly through a non-Party country. We hope that the Ministry of Industry and Trade (MOIT) will give clear guidance in its legal documents.

Liquor production and trading licence: We warmly welcome the promulgation of Decree 105/2017/ND-CP dated 14 September 2017 of the Government on liquor business (Decree 105), replacing Decree 94/2012/ND-CP dated 12 November 2012 of the Government on liquor production and trading (Decree 94). Decree 105 contains positive changes and removes unnecessary restrictions. These include the quota of trading licences based on inhabitants, the limit of one type of liquor trade licence application per trader and sales restrictions from the vertical distribution system in Decree 94. Decree 105 also reviewed and amended the conditions for obtaining a liquor-trading licence. It is therefore now more consistent with the real-life management and operation of liquor distribution and sale in Vietnam, in line with Vietnam's EVFTA commitments.

Intellectual Property Rights: We request that the Government strictly enforces Vietnam's Intellectual Property Rights (IPR) laws, especially on GIs, to reduce unnecessary burdens and improve cooperation between law enforcement agencies and owners of brands and products protected by key European GIs, for example: Champagne,[8] Irish Whiskey, Swedish vodka, Cognac and Scotch Whisky.

Technical regulations: We strongly support the reform and simplification of administrative requirements and conditions in some sectors, including the wines and spirits industry. In particular, we appreciate the on-going discussions to remove certification of product conformity with technical regulations of non-risk products like wines and spirits and reducing some procedures on State examination for imported products. We would like to note that any changes on labelling requirements or technical regulations for alcoholic beverages should be harmonised with international practices that assure product quality and safety for consumption without imposing unnecessary technical barriers to trade.

Below, this chapter describes three key challenges for the EU wines and spirits industry, and outlines specific recommendations that will help increase Government revenue, support industry growth and encourage a responsible drinking environment for those who choose to drink.

8 Champagne will be fully protected after a transition period of 10 years, during which all users incompatible with GI protection, including translation and transliterations in Vietnamese should be phased out. Please see "EVFTA Guidebook", *European External Action Service Vietnam*, p.32. Available at: <https://eeas.europa.eu/delegations/vietnam/documents/eu_vietnam/evfta_guide.pdf> accessed on 5 December 2017.

I. SPECIAL CONSUMPTION TAX

Relevant Ministries: Ministry of Finance (MOF)

Issue description

A stable domestic tax policy is critical for maintaining and attracting foreign investment in Vietnam. However, the EU wine and spirits industry has greatly suffered from successive reforms of the SCT regime. This includes an increase in the tax rates in the SCT roadmap for alcoholic beverages from 2016-2018[9] and an increase of the taxable price in Decree 108/2015/ND-CP dated 28 October 2015 of the Government providing guidelines for some article of the Law on Special Excise Duty and the Law amending the Law on Special Excise Duty (Decree 108) which has been in force since 1 January 2016. These reforms have significantly increased the total tax burden on EU wine and spirits exported to Vietnam and cancelled out the benefits of tariff reductions on these products negotiated under the EVFTA, thereby limiting the potential development of the market.

The retail prices of European and imported wines and spirits have been significantly impacted by the increased rates and higher taxable price from the various reforms, and have therefore become less affordable for Vietnamese consumers. This could lead to a substantial loss of sales of legal imports and an increase of illegal trade. Excessive ad valorem taxation, often exacerbated by high import duty, will encourage illicit activities such as counterfeiting and smuggling of imported wine and spirits. This is a common problem in many other ASEAN countries like Indonesia. This negatively impacts legitimate importers, Government revenues and consumers' safety.

Potential gains/concerns for Vietnam

Increasing the ad valorem rate of SCT could increase Government revenues in the short term. But in the long term it could be counterproductive and would:

- Jeopardise a stable and predictable business environment;
- Nullify and impair the benefits of any tariff cut negotiated under the EVFTA;
- Create a huge economic incentive for illicit activities, leading to tax leakage;
- Decrease tax revenue as consumers trade down or shift to black-market products; and
- Not mitigate the problem of unrecorded alcohol abuse, including home-made alcohol which is sold at very low prices, is easily accessible and which accounts for more than 70% of alcohol consumption in Vietnam.

Indeed, a stable domestic tax policy is critical to maintain and attract foreign investment in Vietnam. The stability of the excise tax base is the solid ground on which excisable industries develop their business, thus helping domestic commerce and retail trade to prosper. This effectively generates jobs and contributes to the Government budget. Unpredictable and opaque changes with no roadmap will therefore discourage existing and prospective investors and impair trust in the stability of the business environment in Vietnam. On 8 January 2018, while attending the State Finance and Budget sector's 2017 review and 2018 planning meeting, Prime Minister Nguyen Xuan Phuc said that tax policies changed too fast and too often, causing negative impacts to people and enterprises. Moreover, the interpretation of a vague provision in a tax regulation can be bias in the favour of the competent authority and does not protect the rights of tax payers. The Prime Minister therefore requested that tax policy should be have a more stable planning of 5-10 years.

Recommendations:

The current SCT roadmap for alcoholic beverages runs until 2018. A clear, predictable and evidence-based SCT roadmap is needed to address public health concerns and revenue objectives:

- We would welcome greater transparency in MOF's evaluation of SCT regime reforms since 2016;
- We would also request that public consultations on any proposed changes to the SCT regime happen as early as possible in the process;

9 Law 70/2017/QH13 amending some articles of Law on Special Consumption Tax. Available at: <http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&mode=detail&document_id=178139> accessed on 8 December 2017.

- We understand from the August 2017 meeting between EuroCham and the National Assembly that there are no new SCT proposals for alcoholic beverages in the near future.[10] However, W&S SC is prepared to engage with the Government, MOF and other relevant Ministries to initiate a positive dialogue and explore a sustainable and evidence-based alcohol tax roadmap that addresses public health concerns around harmful consumption; and
- The Asia Pacific International Wine & Spirits Alliance (APIWSA) is working with the Centre for Customs & Excise Studies (CCES) at Charles Sturt University (CSU) on a tax model of the alcoholic beverage market in Vietnam. We would greatly encourage a dialogue between CCES and the Government, MOF and other relevant Ministries to discuss this and to consider how it could help in exploring a rational and sustainable tax environment for the imported wine and spirits industry in Vietnam.

II. ALCOHOL SOCIAL POLICY

Relevant Ministries: Ministry of Health (MOH), Ministry of Industry and Trade (MOIT), Ministry of Finance (MOF)

Issue description

W&S SC shares the Government's desire to prevent the harmful effects of alcohol abuse as set out in Decision 244/QD-TTg dated 12 February 2014 of the Prime Minister on National Policy on prevention and fighting against harms of abusing alcoholic beverage by 2020 (Decision 244). Ministry of Health (MOH) is also working on a Draft Law on Prevention and Fighting against Harmful Effects of Liquor or Wines and Spirits and Beer (Draft Alcohol Law) scheduled for discussion in the 6th session of National Assembly XIV.[11]

Unrecorded alcohol represents a substantial proportion of total alcohol consumption in Vietnam – around 70% according to the WHO[12]. Commercial alcoholic beverages, including EU-imported wines and spirits, are already highly taxed and regulated, notably in terms of production, distribution and advertisement. Unrecorded alcohol, meanwhile, is untaxed and unregulated. Besides ensuring the enforcement of existing regulations on commercial alcohol, regulations on the production and distribution of highly-prevalent unrecorded alcohol should be further improved and enforced to address growing public health concerns and the demand for safe and high-quality products for consumption.

We also believe that, when consumed responsibly, alcohol can be part of a healthy lifestyle. In moderation, it can bring pleasure, not to mention social benefits. Although, of course, it can cause personal and social harm if misused. Therefore, alcohol policies must operate within a reasonable regulatory framework that balances individual freedom against the wellbeing of society. Furthermore, such policies must be realistic, pragmatic and feasible in order to be successfully implemented.

W&S SC is willing to work with MOH and the drafting Committee's members to share our concerns and recommendations based on international experience of the policy options proposed in the Draft Alcohol Law regarding bans or restrictions on trade (including sales, promotion and advertisement) and the Health Improvement Fund (HIF).

Potential gains/concerns for Vietnam

If the Draft Alcohol Law is overly restrictive to legitimate alcohol trading, it will be counterproductive and drive consumers towards the black market. This will negatively impact tourism and ultimately reduce tax revenues while increasing public health risks. However, effective enforcement of a fair and balanced regulatory regime will help reduce harmful alcohol use across Vietnam, while protecting Government revenue, commercial freedoms and economic activity.

10 "Meeting between EuroCham and Vice-Chairman Phung Quoc Hien and National Assembly Committees on 14 August 2017 in Hanoi." *EuroCham*, August 2017. Available at: <https://www.eurochamvn.org/node/16811> accessed on 30 November 2017.

11 Resolution 34/2017/NQ-QH14 dated 8 June 2017. Available at: <http://vbpl.vn/TW/Pages/vbpq-van-ban-goc.aspx?ItemID=122829> accessed on 8 December 2017.

12 *Op.cit.* World Health Organisation.

HIF's draft has proposed a compulsory contribution of 1-2% of the SCT's taxable price[13], which would go to a non-budgetary fund. Experience tells us that similar public health funds have not been effective to address or reduce the problem of harmful alcohol use in practice. In fact, governments implementing this tax have incurred greater administrative and compliance costs.

Recommendations:

We support multi-stakeholder coordination to enforce more strictly existing laws, such as those on drink driving, road safety and underage drinking. More generally, we support all laws punishing socially unacceptable behaviour, including domestic violence and public disturbance, to address the problems associated with harmful alcohol use.

W&S SC appreciates the opportunity to work with MOH, the Government and other stakeholders to develop an effective alcohol policy regime and collectively tackle the problems of harmful alcohol use in Vietnam. In order to do this, we recommend that the Government:

- Support an evidence-based, proportionate and targeted policy intervention to effectively manage individual consumption and reduce harmful use of alcohol without excessively restricting market access and legitimate business activities;
- Adopt a comprehensive and integrated approach to manage harmful use of alcohol, coupled with a rigorous evaluation of all strategies implemented based on nationally-agreed targets; and
- Consider alternatives to the HIF, as there are more effective ways to achieve responsible alcohol consumption without harming the economy. We also propose that the drafting Committee call for public consultation with relevant stakeholders to exchange and express views, concerns, experience and recommendations on the proposed HIF.

We are also open to scaling-up our social responsibility programmes and look forward to working with the Government to raise awareness and promote responsible drinking in Vietnam. However, instituting an HIF would severely limit our capability to expand our targeted initiatives, some examples of which are below:

- Between 2010 and 2013, wines and spirits companies developed a range of schemes to help tackle drink driving in Vietnam under International Centre for Alcohol Policies (ICAP) and International Alliance for Responsible Drinking (IARD) programs. We have been working closely with the National Traffic Safety Committee to improve drink-driving enforcement and road safety campaigns in Da Nang, Thanh Hoa and Nghe An. The project helped to reduce drink driving and drink-driving-related road crashes in these targeted provinces.
- Between September 2011 and February 2012, together with Ministry of Transport's (MOT) Traffic Safety Department, ICAP and the Directorate for Roads of Vietnam (DRVN), we implemented Phase 1 of a pilot project in bus stations in Dak Lak and Khanh Hoa to strengthen management practices at bus stations and reduce traffic accidents caused by alcohol-impaired drivers.
- In early April 2015, at the Sector Committee's suggestion, Vietnam Association for Responsible Drinking (VARD)[14] was formed, as a response to the CEO's commitment[15] and Vietnam National Alcohol Policy (NAP). VARD worked on a 'Don't Sell to Under 18 Years Old' campaign, carried out on 30 July 2016 at 154 retail outlets in Hanoi, Da Nang, Ho Chi Minh City and 10 provincial cities. In addition, VARD worked with the National Traffic Safety Committee (NTSC) to organise an educational initiative, the '7 Film Fest', a responsible-drinking film festival which took place from June to December 2016. The film 'Sprout at the Bottle's Bottom' received local and international awards under the 'drink-driving prevention' category at the Global Road Safety Film Festival, which was conducted during the 70th Session of the United Nations Economic Commission for Europe Inland Transport Committee.
- In 2017, the Asia Pacific International Wine and Spirits Alliance (APIWSA) worked closely with the National Traffic

13 Resolution 34/2017/QH14 of the National Assembly on Law and ordinance development program for 2018 and adjusting the Law and ordinance program of 2017. Available at: <http://chinhphu.vn/portal/page/portal/chinhphu/congdan/DuThaoVanBan?_piref135_27935_135_27927_27927.mode=reply&_piref135_27935_135_27927_27927.id=1467> accessed on 8 December 2017.

14 More information is available at: <http://vard.org.vn/> accessed on 5 December 2017.

15 "Producers' Commitments: 2016 progress report" *International Alliance for Responsible Drinking (IARD)*. Available at: <http://www.producerscommitments.org/>accessed on 8 December 2017.

Safety Committee, the Vietnam Women's Union, the People's Police Academy (PPA) of the Ministry of Public Security and VARD to support professional road police training on advanced drink-driving enforcement and to empower and equip women to be drivers of social change and to influence behaviours around harmful drinking in communities. Two models were built up in the North and South, and 480 road police in 12 provinces have been trained on advanced drink-driving enforcement. These projects have been extended in 2018[16].

III. CUSTOMS VALUATION FRAMEWORK

Relevant Ministries: Ministry of Finance (MOF), General Department of Customs (GDC)

Issue description

Vietnam has issued laws and regulations regarding the calculation of customs valuations for imported products[17], in compliance with the World Trade Organisation (WTO) Agreement on Customs Valuation. However, a set of reference prices for 'sensitive items' has been set in the Customs database for cases where there is an issue with importer's declared values. This could result in the minimum import values being applied and in discriminatorily high customs levies.

We warmly welcome recent improvements to Vietnam's taxation system, particularly in terms of forms, procedures and time of processing. At the same time, we have seen many different levels of tax audits recently, possibly driven by an interpretation of the Government's need for additional tax revenues. However, in practice, our members have found that administrative breaches seem increasingly to be the focus of many tax and customs audits. This is contrary to the increasing focus on substance over form as indicated in recently-issued tax regulations, such as Decree 20/2017/ND-CP dated 24 February 2017 of the Government prescribing tax administration for enterprises engaged in transfer pricing (Decree 20).

The nature of these breaches, such as inconsistencies in a customs declaration or a perceived failure to follow a non-tax procedure, are simply administrative mistakes. They do not change the substance of the transaction and should not be used as a legal basis for Customs or Tax authorities to apply tax arrears and penalties or to deny a tax refund. We are very concerned about the current customs framework and its application.

Potential gains/concerns for Vietnam

We are keen to co-operate with and support the Government. However, precious resources that could be used to this end are being diverted to dealing with overly-punitive interpretations of current regulations.

We are also very concerned that administrative errors with no material impact, such as checking the wrong box on a declaration form, are being used to open up valuation methods or impose heavy, unmerited penalties in Tax and Customs audits. This undermines confidence in Vietnam's investment environment. Companies might be forced to reconsider investing or downsize operations if the environment is not more supportive of business operations.

Recommendations:

› The Government should assess the long-term impact of these practices vis-à-vis business confidence. W&S SC would like to work with and support the Government to achieve its tax-management ambitions. On customs valuation, we urge a focus on substance over form. We also request that the Government share its rationale and evidence as to how decisions are reached with affected businesses. This would ensure compliance with WTO rules, improve transparency and allow companies to set the right market price, which benefits consumers and ultimately boosts both imports and customs revenue.

› In the long run, we hope the government can take a principled, 'light touch' approach to regulations founded

16 http://dantri.com.vn/giao-thong/uong-co-trach-nhiem-va-an-toan-giao-thong-20180129181852362.htm

17 Law on Customs 2014; Decree 08/2015/ND-CP dated 21 January 2015 and Circular 39/2015/TT-BTC dated 25 March 2015 as confirmed in the letter Ministry of Finance sent to Eurocham on November 11th, 2017.

on substance over form. This will create a more sustainable way of working with the private sector to promote growth in Vietnam. We hope to work closely with the Customs authorities to foster their role not only as regulators, but also as facilitators for businesses. This would create conditions for a more predictable and consistent source of tax revenue for the Government and a pro-business environment.

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