

CHAPTER 20 WINE AND SPIRITS

OVERVIEW

The population of Vietnam is estimated at around 94 million people.¹ The legal drinking age is 18 years old and, every year; a million new consumers enter the legal-drinking-age bracket.

Regarding the alcohol consumption market trend and size, the World Health Organisation (WHO) report published in 2014, highlighted market specificity: the high proportion of unrecorded alcohol accounting for around 70 per cent of domestic alcohol consumption,² and estimated at around 275 million litres.³ This similar data was presented in a survey report by the Institute for Population and Social Studies under the National Economics University,⁴ which has provided analysis of recorded alcohol (including locally made and imported beer, spirits and wines) and unrecorded alcohol (including homemade, counterfeit, and smuggled and substitute alcohol)⁵ in Vietnam.

Beyond this aspect, the consumption of alcohol is dominated by the beer category. In 2017, Vietnam sold 4 billion litres of beer, an average of 45 litres per person. The beer industry has set a target to produce 4.1 billion litres by 2020, and 5.5 billion litres by 2035. The Vietnamese beer sector is dominated by four brewers: Habeco, the 100 per cent Carlsberg-owned Hue Brewery, Sabeco, and Heineken NV. These four entities hold 90 per cent of the market, while the remaining 10 per cent is divided among Masan Brewery, Sapporo, AB InBev, and Carlsberg-owned Southeast Asia Brewery. While Habeco, Hue Brewery, and Sabeco dominate the market in the northern, central, and southern regions respectively, Heineken NV dominates the high-end and medium beer segments.⁶ Thai Beverage (Thai Bev) bought a US\$4.84 billion majority stake in Vietnam's top brewer Sabeco, giving them control of brands like Saigon Beer and 333. The Sabeco deal will also help Thai Bev tap into Vietnam's beer market, worth about US\$6.48 billion last year, where a young population and booming economy are an attractive lure, despite political resistance, a high minimum bid price and a cap on foreign ownership.⁷

In this context, the formal spirits market was estimated at around 5.499 million nine-litre cases – about 46.79 million litres – in 2017⁸ (+5 percent vs 2015) mainly driven by the local spirits accounting 85% and growing at +7 percent over the same period. However, consumption of imported spirits has witnessed a decline by -5 percent to reach 857 thousand nine-litres cases – 7.7 million litres – in 2017. It was not an expected trend, given Vietnam's rapid economic growth and urbanisation, but Special Consumption Tax (SCT) increase since January 2016 has generated a major non-favourable impact on pricing and informal product inflow. Meanwhile, the formal wine market was estimated at around 1.681 million nine-litre cases – about 15.13 million litres⁹ to reach +5 percent growth over 2015 as well.

1 *General Statistics Office of Vietnam*. Available at: <<http://www.gso.gov.vn/default.aspx?tabid=621&ItemID=18957>> last accessed on 26 January 2019.

2 "Global status report on alcohol and health 2014", *World Health Organisation*. Available at: <http://apps.who.int/iris/bitstream/handle/10665/112736/9789240692763_eng.pdf?sequence=1> last accessed on 26 January 2019.

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

4 "Unrecorded alcohol in Vietnam", *International Alliance for Responsible Drinking*. Available at: <<http://www.iard.org/wp-content/uploads/2018/02/Unrecorded-Alcohol-Report-Vietnam.pdf>> last accessed on 26 January 2019.

5 Classification of types of alcohol as recorded and unrecorded was made in accordance with IARD's Alcohol Taxonomy and informed by IARD's Toolkit for Assessing the Unrecorded Alcohol Market.

6 "Heavy competition behind the allure: Vietnam's beer market", *Vietnam Investment Review*, 23 May 2018. Available at: <<https://www.vir.com.vn/heavy-competition-behind-the-allure-vietnams-beer-market-59423.html>> last accessed on 26 January 2019.

7 "Thai beer magnate extends SE Asia push with \$4.8 billion Sabeco deal", *Reuters*, 17 December 2017. Available at: <<https://www.reuters.com/article/us-sabeco-m-a-sale/thai-beer-magnate-extends-se-asia-push-with-4-8-billion-sabeco-deal-idUSKBN1EB0DM>> last accessed on 26 January 2019.

8 *International Wine and Spirits Record (IWSR)*, July 2018. Available at: <http://www.theiwsr.com/iwsr_core_reports.html> last accessed on 26 January 2019.

9 *Ibid.*

Source: IWSR 2018 (K 9Lcs)	2015	2016	2017	2015 vs 2017
TOTAL SPIRITS	5,242.00	5,370.00	5,499.50	5%
Local	4,337.50	4,505.00	4,642.50	7%
Imported	904.5	865	857	-5%
TOTAL WINE	1,599.25	1,630.00	1,681.25	5%
Local	342.75	368.5	391	14%
Imported	1,256.50	1,261.50	1,290.25	3%

EU-Vietnam Free Trade Agreement (EVFTA)

The EVFTA, expected to be ratified in 2019, will eliminate import tariffs on 99 per cent of all traded goods within a decade and allow Vietnamese manufacturers greater access to the large and wealthy European consumer market. Meanwhile, the EU will get increased access to Vietnam and the ASEAN region once they enter into bilateral agreements with the individual countries. The Agreement will deliver significant market access improvements for spirits products. Many of the provisions set out in the Agreement would directly and positively impact the spirit market in Vietnam and, as a result, Vietnam is one of the most promising markets in Asia.

First and foremost, the EVFTA foresees the full elimination of the import tariff after seven years. And the Rules of Origin (ROO) will allow for the use of logistic hubs, provided there is no “alteration” of the goods in the third-party hub country. EU exports depend in large part on the reputation of our high-quality products. It is, therefore, good to see that Vietnam has agreed to improve its Intellectual Property Rights legislation to protect a list of wine and spirits products covered by European Geographical Indications (GIs) such as Cognac, Scotch Whiskey, and Champagne. Furthermore, the EVFTA contains strong provisions to improve the legal framework in Vietnam for enforcement of IPR. Vietnam has also committed not to apply any discriminatory quantitative and/or qualitative vertical or horizontal restrictions on licensing. More generally, the FTA will provide a framework for cooperation, regulatory discussion and a dispute settlement mechanism. We respectfully request that the Vietnamese Government does all it can to ensure a speedy and smooth ratification and implementation of the EVFTA.

The business environment in Vietnam remains very challenging for European importers, who compete with a growing local industry. Since 2016, we have had to face a sharp increase of the Special Consumption Tax (SCT) burden creating serious difficulties for business operations. There are no winners in this situation: Business operators have no prospect of growth, the high price of taxed goods means that consumers are more exposed to counterfeit or smuggled goods, sometimes of dubious quality, and Government revenues are adversely impacted. This is not in line with the spirit of the FTA and Vietnam’s commitment to a fair and balanced regulatory regime.

We appreciate the opportunity to discuss with relevant authorities the development of legal documents for implementing the 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. It is our understanding that self-certification by EU exporters could, in principle, be acceptable to Vietnam. This means that it would be acceptable that the origin declaration is made out on the invoice or other commercial documents by an EU exporter with an authorised exporter number. We, therefore, understand that the use of the Hub Model, and the non-alteration operations carried out under Customs supervision in the hubs (i.e. non-Party country), as well as the use of a Non-Party Invoice, would still allow EU goods to remain eligible for tariff concessions provided in the future EVFTA. We appreciate the opportunity for an in-depth exchange and discussion with the Vietnamese authorities on the subject.

We strongly support the reform and simplification of administrative requirements and conditions in some sectors, including the wines and spirits industry. In particular, Decree 15¹⁰, which simplifies certification of product

¹⁰ Decree 15/2018/ND-CP dated 2 February 2018 of the Government detailing the implementation of some articles of the Law on Food Safety.

conformity with technical regulations of non-risk products like wines and spirits and reduces some procedures on State examination for imported products – from obtaining approval of authority to self-declaration and self-responsibility. We also welcome Decree 81¹¹, which confirmed the removal of the trade and payment discount from proposed new promotional forms.

Technical regulations for alcoholic beverages and labelling requirements should be harmonised with international practices that assure product quality and safety for consumption without imposing unnecessary technical barriers to trade. We recommend consultative dialogue with industry if there are any changes relevant to these areas.

Below, the EU wines and spirits industry outlines three key challenges. We would like to gain further support from Government and relevant authorities to create more favourable conditions for EU wines and spirits, without undermining Government revenue, and encourage a responsible drinking environment.

I. ALCOHOL SOCIAL POLICY

 Relevant Ministries: Ministry of Health (MOH), Ministry of Industry and Trade (MOIT), Ministry of Finance (MOF), Ministry of Justice (MOJ) and Ministry of Culture, Sports and Tourism (MOCST)

Issue description

The EuroCham Wines and Spirits Sector Committee (“W&S SC”) appreciates the efforts of Vietnam’s National Assembly in developing the Law on Prevention and Countering Harmful Effects of Beer and Liquors (the “Draft Law”). We acknowledge and appreciate the transparency and openness shown throughout the process of drafting the Law, with the participation of various relevant stakeholders. We support Vietnam in developing legislation to control and reduce the harmful use of alcohol. Nevertheless, in order to make the law effective and feasible, its provisions should be based on a non-discriminative approach and address the issues of alcohol abuse rather than restriction of legitimate business activities or products. We hope that the Draft Law will be reviewed and revised along these lines, and therefore not affect responsible consumers and legitimate business activities, which make a positive contribution to Vietnam’s economic development and improve the quality of life for Vietnamese people.

While we highly appreciate the positive changes in the latest draft, we are still concerned with the further burden and restrictions which are only imposed on legitimate commercial activities, especially the name of the Law; the ban on alcohol sales via e-commerce for products of 15 per cent abv. and above; health warning label requirements; and ban on brand promotion and sponsorship.

Unrecorded alcohol represents a substantial proportion of total alcohol consumption in Vietnam. This alcohol is untaxed and unregulated. According to a report by the Institute of Population and Social Issues, the consumption of unrecorded alcohol accounted for 75 per cent of total alcohol consumption, of which 74 per cent are home-made liquor. The report also indicates that this consumption is closely associated with harmful drinking behaviours.

We believe that the Draft Law should focus on addressing three key sets of objectives and solutions. The first is the protection of public health through strengthening the control of production and circulation of unrecorded alcohol (mainly home-made liquor in Vietnam), which could directly harm consumers’ health. The second is changing the mindset and behaviours of consumers through education and communications, especially at the grassroots level. The third is the prevention of violations caused by alcohol abuse through strict penalties and enforcement.

Regardless of the alcohol type, abuse or excessive use could cause equal harms to people’s health and society. Therefore, the Draft Law and its proposed regulations should be non-discriminatory, realistic and enforceable, to support Vietnamese consumers to consume responsibly. Therefore, we would like to work with the Government and share international experience to prevent the harmful effects of alcohol abuse through regulations, enforcement and other effective education and intervention programs.

¹¹ Decree 81/2018/ND-CP dated 22 May 2018 of the Government on elaboration of regulations of commercial law on trade promotion.

Potential gains/concerns for Vietnam

Even though unrecorded alcohol occupies a large proportion of the market, this segment is not affected by any regulations or control measures related to food safety, labelling, declaration and accountability, price, taxation or other commercial restrictions. The impact of these measures is restricted to the recorded wine and spirits market, which only accounts for around 3 per cent of the total legal consumption of alcohol in Vietnam.¹² Therefore, if the Draft Law imposes any obligatory contribution, increased tax or limit on advertising and promotion, the problems related to unrecorded alcohol and alcohol abuse would not be addressed. This would also deepen the discrimination between recorded and unrecorded alcoholic beverages or create an environment for the latter to further grow and harm consumers' health.

The Draft Law introduces some overly restrictive measures on legitimate alcohol trading, such as bans and restrictions on sales time, marketing, and sponsorship. This will negatively impact tourism and ultimately reduce tax revenues while increasing public health risks, driving consumers towards the black market. Therefore, we believe that 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.

While drinking alcoholic beverages in moderation is considered part of a balanced lifestyle, we recognise that the abuse of alcohol, regardless of strength or category, would result in economic and social costs. Therefore, we share the Government's objectives to manage the harmful effects of alcohol abuse through appropriate policies and actions. We have also dedicated resources and investments in Corporate Social Responsibility programs, aimed at managing the harmful use of alcohol through education against alcohol abuse, raising awareness of responsible drinking and strengthening drink-driving enforcement.

Recommendations:

We understand that, following the debate at the 6th Session of the National Assembly, the Draft Law will be passed at 7th session.¹³ We have seen significant progress in the latest version of the Draft Law which has addressed, in part, some key issues such as the protection of public health and control of illicit, low-quality alcohol. With the aim of contributing to the finalisation of the Draft Law, we would like to comment on a few outstanding issues.

1. Specific comments on the Draft Law

- 1.1 Name of the Law: We recommend that the name of the Draft Law should be "Law on prevention and fighting against the harmful effects of alcohol abuse" to be consistent with Decision 244/TQ-TTg dated 12 April 2014 regarding "national policies on prevention and fighting against the harmful effects of alcohol abuse". Legislation should be consistent to be enforceable and avoid misunderstanding.
- 1.2 Ban of e-commerce for beer and liquor of above 15 per cent abv (Article 5): More details in item III below.
- 1.3 Health Warning Label (HWL):

The mandatory inclusion of HWLs on alcoholic products would be insufficient to deter excessive consumption, while creating an additional cost burden on business. We recommend keeping it as encouraged information on the harmful effects of excessive consumption. Furthermore, we suggest the Government works with legitimate alcohol traders to identify self-regulatory initiatives to raise consumers' awareness of harms associated with excessive consumption of alcohol by adopting effective tools and programs targeted at reducing alcohol-related harm. EuroCham's W&S SC would like to suggest further concrete proposals to achieve this aim.

- 1.4 Brand sponsorship

Brand sponsorship, or the provision of branded products, is a common form of corporate assistance,

¹² "Global status report on alcohol and health 2014", *World Health Organisation*. Available at: <http://apps.who.int/iris/bitstream/handle/10665/112736/9789240692763_eng.pdf?sequence=1> last accessed on 26 January 2019.

¹³ Resolution No. 57/2018/QH14 dated 8 June 2018 of the National Assembly amending 2018 Legislative Agenda 2018 and approving 2019 Legislative Agenda.

especially for food festivals or culinary cultural exchange events which are normally organised by international organisations, embassies and associations. The focus of these events is cultural and gastronomic exchange, facilitating greater knowledge and friendship between Vietnamese and foreigners. Therefore, we recommend that the ban of brand sponsorship should be removed from the Draft Law or exempted for occasions such as food festivals or culinary cultural exchange events.

2. Strengthening Remedies and Enforcement

We recommend that the Draft Law should include stricter penalties and enforcement provisions. For instance, with regards to penalties against counterfeit, smuggled and low-quality products, besides confiscation, the Draft Law should impose other measures such as destruction of the products, withdrawal of the producers' and distributors' business license, or criminal charges in serious cases where damage to health has occurred. Similarly, drink driving should be subject to stricter penalties such as higher fines, withdrawal of driving license, confiscation of vehicles, or criminal charges in serious cases casualties have been caused.

3. Changing consumer behaviour through education and communication

The Draft Law lacks specific provisions on education and communication on responsible drinking and the harmful use of alcohol. Education on responsible drinking should be the mission of not only local People's Committees but also stakeholders such as schools, local civil society, media, families, law enforcement authorities, producers, and traders. Some specific initiatives for consideration include:

- Secondary and high schools should include workshops on legal drinking age, health and other negative effects of harmful use of alcohol and how to deal with peer pressure or when offered drink outside of school;
- Producers should be encouraged to inform consumers on legal drinking age and risk levels of drinking through warning messages on their official websites, labels or advertisements;
- Advertisements should be encouraged to include education on responsible drinking and the risk levels of drinking liquor and beer;
- Traders should be encouraged to show messages on legal drinking age and warning messages against drinking driving. They should also be encouraged to undertake age checks if there is doubt about the age of the customers.

CORPORATE SOCIAL RESPONSIBILITY ACTIVITIES

W&S SC, its member companies and international spirits industry organisations such as the International Alliance for Responsible Drinking (IARD) and the Vietnam Alliance for Responsible Drinking (VARD), in partnerships with various Ministries, NGOs and researchers, have carried out a number of programs on prevention and fighting against alcohol abuse in Vietnam. So far, these programs have reached 39 provinces in all three regions of Vietnam. From 2010 to 2017, 1.2 million students have been educated about the negative consequences of underage drinking and drink driving. The industry has also trained trainers who rolled out training at commune and district level: 1,134 traffic police officers on drinking-driving enforcement and 926 local officials on communication on responsible drinking. These programs have contributed to the 11.6 per cent reduction of traffic accidents deaths and the 42.1 per cent reduction in traffic injuries between 2013 and 2017. In provinces where specific interventions took place, good results were achieved, such as reductions in road crashes of 40 per cent in Da Nang, 37 per cent in Bac Giang and 35 per cent in Binh Thuan between 2013 and 2015. We are proud to be part of the national efforts against the harmful effects of alcohol abuse.

In 2018, we continued our commitments by expanding comprehensive actions through enhanced partnerships with the National Traffic Safety Committee, Vietnam Women's Union, the National Centre for Health Communications and Education (Ministry of Health), the People's Police Academy and the National Traffic Police Department (Ministry of Public Security), and the Vietnam Traffic Safety Association.

In cooperation with the National and Provincial Women's Unions, 40 "Women speak up for responsible drinking" clubs were established, 2,000 union members were trained to properly educate their community on the dangers of underage drinking, drink driving, binge drinking, drinking during pregnancy, methanol poisoning and domestic violence against women. Group discussion and community talk shows targeting 10,000 residents are being organised all over 10 provinces in the Red River.

Working closely with the National Centre for Health Communications and Education via the Women's Union, communication sessions are being organised in 5 high schools in Hanoi and will reach 2,000 students on underage drinking.

In cooperation with the Police Academy, 120 students were trained on how to design and organise communication activities as they will be working closely with provincial authorities on responsible drinking and drink-driving communications during their political practice. 240 traffic police in 6 provinces are training to improve drink-driving enforcement. This will mark the completion of drink-driving enforcement training in all 63 provinces of Vietnam. Accordingly, the trained officers will continue to roll out trainings to district police and check-point campaigns will be organised with two clear objectives: education and enforcement.

In cooperation with the National Traffic Safety and Vietnam Traffic Safety Association, research on drink driving behaviours of motorbike riders in Vietnam is being conducted. This aims to get accurate data on the percentage of drink-driving road crashes and to educate policymakers on the root cause of drink driving: The behaviour of consumers, not the alcoholic beverage itself. Proposals on stricter enforcement and more budget allocation to such important work will be sent to leaders and policymakers in due course.

This year, VARD played a very important role in spreading messages on responsible drinking and sales to the public and to targeted shops through impactful events co-organised with local authorities and public influencers. In addition, replication of good practices by member companies also complimented the good work on the ground. The "My Story – Your Lesson" program, where a diverse group of communicators including drink-driving victims, traffic police, rehabilitation doctors and youth union leaders, was a great example. It reached 19,000 high school and university students in Hanoi and Bac Giang Province.

These efforts resulted in saving 258 lives from drink-driving traffic accidents in the first 8 months of 2018. We are proud to be acknowledged as part of the solution and will continue to prevent and fight against the harmful use of alcohol while promoting responsible drinking as part of a healthy, balanced lifestyle.

II. SPECIAL CONSUMPTION TAX

Relevant Ministries: Ministry of Finance (MOF)

Issue description

The European wine and spirits industry has suffered from successive SCT reforms, combining a progressive increase of the rate (from 25 to 35 per cent for wine and 50 to 65 per cent for spirits) and a change of the taxable price (from the import price, i.e. CIF, to the importers' selling price) since January 2016. The negative impact of these reforms on our operators is very significant as the tax burden on importers has, in some instances, more than doubled.

The amount of SCT payable under the new regime is substantially higher than the total taxes (SCT and import duty) payable under the old SCT law. In practical terms, this means that - even assuming a zero-import duty from full implementation of the EVFTA from the 7th year - there will be no improved access to the Vietnamese market for legitimate importers, despite the achievement of the EVFTA negotiation. Indeed, successive increases of SCT on wines and spirits fully nullify the good outcome of this Agreement. It would, therefore, lead to even further increase in cross-border activities, consumption of unrecorded alcohol as well as counterfeit of popular, high-value items, and thus exacerbate revenue loss from tax leakage and increase the risks to public health.

Potential gains/concerns for Vietnam

The European wine and spirits industry had been supportive of an ambitious FTA with Vietnam from the very beginning, as it expected to benefit from a mutual opening of markets. Unfortunately, the SCT reforms fully nullify the benefits of the tariff reductions negotiated under the FTA. We believe a stable domestic tax policy is critical for maintaining and attracting foreign investments in Vietnam.

Recommendations:

We would like to engage with the Government and MOF to initiate a positive dialogue and explore a sustainable and evidence-based alcohol tax roadmap that addresses public health concerns around harmful consumption, including a roadmap to bring unrecorded alcohol into the formal economy.

Predictability and stability help businesses plan for the long-term and benefits revenue collection in Vietnam. To that end, we would like to request greater transparency in MOF's evaluation and impact assessment of SCT regime reforms since 2016 before moving to any new proposal, including plans in Ho Chi Minh City. We believe public consultations on any proposed change to the SCT regime would bring sustainability to our members' industry in Vietnam.

The European wine and spirits industry is prepared to positively engage with the Government, MOF and other relevant Ministries to create dialogue to examine different options for an alcohol tax regime that address the fiscal and public health objectives.

III. RESTRICTION ON E-COMMERCE

Relevant Ministries: Ministry of Industry and Trade (MOIT)

Issue description

The sale of wines and spirits is allowed in the market but is prohibited on the Internet under Decree 105.¹⁴ With the rapid development of the Internet and e-commerce, the prohibition of e-commerce for any commodities which are not otherwise prohibited goes against the common market trend and is not feasible.¹⁵

In addition, according to the Draft Law No. 5 dated 27 December 2018, the "sale of beer and liquor of above 15% abv on the Internet" is among the prohibited activities stipulated under Article 5. We are very concerned about the prohibition of legitimate business activities being undertaken on the Internet, since the sale of beer and liquor is not prohibited by any Vietnamese legislation. Moreover, no items on the List of Restricted Business Products (including cigarettes) are prohibited from being sold on the Internet, which is merely a distribution tool for business activities. Thus, we are very concerned that legitimate businesses could be prevented from using the Internet to perform business activities, especially in a country like Vietnam, which has been actively promoting the 4th Industrial Revolution.

- This prohibition is only aimed at products which account for less than 3 per cent of total alcohol consumption in Vietnam, according to a recent report by the World Health Organisation (WHO).¹⁶ There is no rational basis for prohibiting this small segment of the alcoholic beverages market if the objective is to decrease availability and address harmful consumption.
- The ban on e-commerce currently exposes consumers to products of dubious origin. Although e-commerce ban of wines and spirits was stipulated in Decree 94,¹⁷ and later in Decree 105, it is still possible to find and purchase alcohol products online and it has only deterred legal and official sales. Therefore, consumers are at

¹⁴ Decree 105/2017/NĐ-CP dated 14 September 2017 of the Government regulating Alcohol Business (replacing Decree 94/2012/ND-CP dated 12 November 2012).

¹⁵ "Wine advertisements invade the Internet", ANTV, 15 November 2017. Available at <<http://www.antv.gov.vn/tin-tuc/kinh-te/quang-cao-buon-ban-ruou-tren-mang-internet-van-tran-lan-219739.html>>, last accessed on 24 February 2019.

¹⁶ "Global status report on alcohol and health", *World Health Organisation* (2018) p. 361.

¹⁷ Decree 94/2012/ND-CP dated 12 January 2012 of the Government on wine production and wine trading

risk of not being offered the same certainty about the origin of the products as those buying from authorised retailers. This exposes them to greater risk of purchasing smuggled, unclear origin, low-quality or counterfeit products which could have severe health implications for consumers. To date, there has been no assessment of the impacts or effectiveness of this prohibition on controlling liquor consumption.

- Currently, many countries allow e-commerce of alcohol regardless of the strength of the products. Among these countries are France, Germany, the United Kingdom, and the United States. Within Asia, these countries include China, Cambodia, Hong Kong, Japan, Malaysia, the Philippines, and Singapore. The prohibition of e-commerce on any alcohol product would not be consistent with common regional and international trends and make Vietnam an anomaly in the region.
- In countries which allow e-commerce sales of alcohol, experience reveals that it helps to improve transparency and tax collection, when payments are made by bank cards or transfer, thus improving the integrity of the tax system. E-commerce allows governments to track alcohol sales and helps authorities to develop a more holistic understanding of total alcohol consumption.

Potential gains/concerns for Vietnam

Currently, despite the ban on selling wines and spirits on the Internet, any consumer can easily find and purchase any wines and spirits products online. However, most products are illegally imported and circulated, because legitimate producers and traders comply with the laws.

The permission for legitimate producers and traders of alcohol to sell their products on the Internet will help the Government to control alcohol consumption and collect more tax compared to the alcohol trade at physical retail shops, because the payments must go through banks.

Recommendations

Instead of an absolute ban, allowing e-commerce sales of alcohol with specific business conditions should be considered. EuroCham's W&S SC would readily collaborate with the Vietnamese authorities to contribute to the achievement and enforcement of appropriate tools to control and monitor those online sales. Specifically, e-commerce sales of liquor should be allowed for distributors or retailers which meet the conditions for a liquor business, have a liquor trading license, and take payments by credit cards or bank transfer. The e-commerce websites should have the tools to verify the age of customers and the shippers should be responsible for checking their ID for age verification. Transactions must be transparent and convenient for relevant competent agencies to inspect and check when needed. Therefore, we would like to recommend that Article 5 of the Draft Law be amended to remove the ban on e-commerce of alcohol of above 15 per cent abv; and Article 17 regarding the conditions for e-commerce of beer and liquor be amended to be applicable for all alcoholic beverages instead of only alcohol below 15 per cent abv.

IV. CUSTOMS VALUATION FRAMEWORK

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

Issue description

Our members have found that administrative errors (e.g. checking the wrong box on a declaration form) increasingly seem to be the focus of many tax and customs audits. The nature of these administrative errors, such as inconsistencies in a customs declaration or what is considered a failure to follow a non-tax procedure, is simply an administrative mistake, which does not change the nature and substance of the transaction. Therefore, it should not be used as the pretext for the customs or tax authorities to apply tax arrears and penalties or deny a tax refund.

We highly appreciate the promulgation of Decree 59¹⁸ and Circular 39¹⁹ which stipulates the case of declaration of a special relationship (failure to declare or declaration that the special relationship has no impact on transaction value). For both cases, the Customs authority shall audit the influence of this relationship to the transaction price and should not use it as a legal basis to apply tax arrears and penalties or to deny a tax refund. However, we are still very concerned about the customs framework, and the different interpretation and application by Customs authorities.

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 instead being diverted to dealing with overly-punitive interpretations of current regulations. This practice undermines confidence in Vietnam's investment environment and puts our business at high risk of unpredictable and unplanned operations.

Recommendations:

We would like to co-operate with and support the Government to apply the same tax management direction, focusing on substance over form in the Customs valuation process. This ensures compliance with WTO rules, improves transparency, and allows companies to set the right price for the market which benefits consumers and ultimately boosts imports and Customs revenue.

The Government should assess the long-term impact of these practices vis-à-vis business confidence. Our members would like to work with and support the Government to achieve its tax-management ambitions. In addition, we seek more transparency from the Government to share their rationale and evidence as to how they come to their decisions with affected businesses. This will create a friendlier and more sustainable way of working with the private sector to promote growth in Vietnam. In the long run, we hope to work closely with the Customs authorities to champion 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.

ACKNOWLEDGEMENTS

EuroCham Wine and Spirits Sector Committee

¹⁸ Decree 59/2018/ND-CP dated 20 April 2018 of the Government amending Decree 08/2015 / ND-CP detailing the implementation the Customs Law on customs procedures, inspection, supervision and control.

¹⁹ Circular 39/2018/TT-BTC dated 20 April 2018 of the Ministry of Finance amending some articles of Circular 38/2015/TT-BTC on customs procedures, customs supervision and inspection, export tax, import tax, and tax administration applied to exported and imported goods.