



No. 1805/2018/ACAPR/EUC-MSC

Ho Chi Minh City, dated 18th May, 2018

Respectfully to:

H.E. Mr. Mai Tien Dung

Minister, Chairman of Office of the Government
The Socialist Republic of Vietnam

Mr. Ngo Hai Phan

General Secretary, Director General of Department of Administrative Procedures Control
Prime Minister's Advisory Council for Administrative Procedures Reform

Re: Appreciation note to ACAPR leaders for successful co-organisation of "Dialogue meeting on difficulties on administrative procedure: Tax; Customs and Export & Import" on 4th May 2018 in Hanoi; Key topics and recommendations of Mobility Sector Committee of EuroCham.

Your Excellency Mr. Mai Tien Dung and Mr. Ngo Hai Phan,

The European Chamber of Commerce in Vietnam ("**EuroCham**") and its Mobility Sector Committee ("**Mobility SC**") would like to present our best compliments and regards to Your Excellency and the Prime Minister's Advisory Council for Administrative Procedures Reform ("**ACAPR**") for successfully co-organising the "**Dialogue meeting on difficulties on administrative procedure: Tax; Customs and Export & Import**" on Friday, 4th May 2018 in Hanoi. EuroCham and Mobility SC are truly impressed by the openness and constructiveness of the Dialogue under Your Excellency's leadership.

EuroCham and its members have always worked in close cooperation with the Government with the aim of promoting Vietnam as an attractive investment destination for European businesses. The Mobility SC represents the voice of EuroCham members in the mobility sector. Its priority is to support Vietnam to become a competitive destination in the field.

We would like to highlight our position regarding Decree 116/2017/NĐ-CP of the Government dated 17th October, 2017 on requirements for manufacturing, assembly and import of motor vehicles and trade in motor vehicle warranty and maintenance services ("**Decree 116**") and other key topics of the mobility industry in the attached **Annex I**. We hope Your Excellency will help to convey our concerns to H.E. Prime Minister Nguyen Xuan Phuc for His directions and look forward to following-up with ACAPR on these issues soon.

The European Chamber of Commerce in Vietnam and the Mobility Sector Committee would like to reiterate our sincere appreciation for the opportunity to share our perspectives with you and the Prime Minister's Advisory Council for Administrative Procedures Reform. We remain committed to working together with the Vietnamese Government and the Prime Minister's Advisory Council for Administrative

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Procedures Reform to develop and enhance the policies to ensure a fair, integrated, sustainable and transparent business environment.

Respectfully yours,

Nicolas Audier
Co-Chairman
European Chamber of Commerce in Vietnam

Laurent Genet
Chairman
Mobility Sector Committee
European Chamber of Commerce in Vietnam

*Should you need any further clarification, please kindly contact us via **Ms. Nguyen Lan Nhi**, Government and Public Affairs Officer, at gov-affairs@eurochamvn.org or telephone **0437152228**, ext. **21** or mobile number **0983841907**.*

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ANNEX 1

KEY TOPICS AND RECOMMENDATIONS OF EUROCHAM'S MOBILITY SECTOR COMMITTEE

1. SCT cap for tax calculations

Issue: Due to the limited volume of imported CBU passenger cars, the SCT cap deducted from the taxable price should be increased from 7% to 15% for the importers and dealers to be able to maintain sustainable business operations. Also, the definition of 'related parties' applied to SCT calculation has been changed over time. It remains unclear and this creates uncertainty for the importers on their tax liabilities.

Recommendations: We recommend that the SCT cap deducted from the taxable price should be increased from 7% to 15%. SCT should become a standard calculation applicable to all, whatever the distribution channels, integrated ownership and unrelated parties' relationship. Tax liabilities generated by unclear or changing definitions of related parties should not be subject to late payment penalties and should be waived.

2. Creditable Special Consumption Tax (SCT) for automobile after customs value re-determination

Issue: According to Provision 4, Article 2 of Circular 130/2016/TT-BTC of MOF, "Payers of SCT on the goods on which SCT has been paid upon importation can set off such SCT paid against the SCT payable that they calculate for such goods when sold domestically. The SCT on the consume-taxed imports when sold shall be deducted to the maximum extent of the SCT that is determined upon domestic sale." In our interpretation, this means that in case the SCT declared and paid upon importation by importers is lower than the SCT determined upon domestic sale, the total payable SCT to the State Budget would solely be the SCT determined upon domestic sale.

However, in practice, there are cases in which customs re-valuation is applied by the Post-Customs Clearance Audit Department (PCCAD), usually in a period after goods were sold domestically. In practice, PCCAD may increase the SCT amount declared and paid upon importation by importers. Our concern is that even when the re-valued importation SCT is lower than the SCT determined upon domestic sale, customs authorities still request importers to additionally pay the different amount between the importation SCT declared by importers and the importation SCT re-valued by PCCAD. This would lead to tax payment duplication.

Recommendation: To avoid duplicate tax payment, we would like to get confirmation from GDT that in the above case, when the importation SCT re-valued by PCCAD is increased, yet is still lower than the SCT determined upon domestic sale, the different amount imposed by customs authorities will be fully deductible against the respective SCT determined upon domestic sale. Importers are allowed to offset the imposed SCT amount against our SCT payable arising in our upcoming SCT period. We are looking forward to respective guidance from General Department of Taxation on the following points:

- a. Which authorities will handle the SCT deduction for the above case of the difference between importation SCT declared by importers and importation SCT re-valued by PCCAD? Is it the provincial Tax Department where SCT was declared and paid or PCCAD under the General Department of Customs?
- b. What procedures and documentation are applicable since it is not regulated in the Law on Tax Administration?

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With the aim of simplifying administrative processes, we highly recommend that, in the case the value of SCT declared and paid upon importation by importers is increased by PCCAD in a customs revaluation process, yet is still lower than the SCT determined upon domestic sale, importers should not be required to pay the additional, higher amount.

3. Increase of VAT for vehicles, spare parts and accessories from 10% to 12%

Issue description: We are aware that Ministry of Finance has proposed increasing value added tax (VAT) for most goods and services, including vehicles, spare parts and accessories, from 10% to 12%. If such a proposal is approved by the National Assembly in 2018, the new tax rate will be applicable from early 2019.

Given the current economic situation with relatively low per capita income, living standards and business performance, the increase in VAT may have unexpected negative impacts, which could become a burden for Vietnam's socio-economic conditions in general and the motorcycle sector in particular.

Recommendations: The Government should carefully review the proposal to increase VAT for vehicles, spare parts & accessories. In particular, there should be a roadmap for VAT adjustment in the long-term which is relevant to the socio-economic status and residents' income.

4. The implementation of Decree 116 with insufficient transitional timing

Issue: There is no transitional time for CBU importers to implement Decree 116/2017/ND-CP and Circular 03/2018/TT-BGTVT. There has been hardly any homologation for CBU imported from Europe in 2018 due to new VTA requirements. The effective implementing deadline was given with too short notice and inefficient transitional period so that goods "en route" were affected. Vehicles continued to arrive and have been stuck at the harbour since 1st January 2018. This causes high logistics fee and high operation cost day by day.

By mid-April 2018, only one car company seems to have CBU vehicles homologated, so the process is not as smooth as mentioned by the representative of the PM's ACAPR.

Recommendations: Due to this **critical situation for CBU importers and dealers**, we recommend postponing ASAP for 6 months the implementation of these documents. The new VTA requirements according to Decree 116/Circular 03 should be waived. Alternatively, homologation should be maintained for those CBU models previously homologated in 2017 to provide reasonable time for CBU importers to comply.

5. Lot by lot test required in homologation

Issue: The lot by lot test required in homologation also creates a situation in which importers may have to homologate the same model, even if an identical model is still waiting for an emission test at NETC. Moreover, vehicles imported from the EU with UNECE/ECE/EC certification are no longer exempted from testing as used to be the case in the past.

Recommendations: We strongly recommend that homologation test should be limited to the first lot of new models and not be repeated for subsequent lots of the same model. The test validity period for CBU models should be consistent with CKD vehicles (18-36 months) to be compliant with GATT. Alternatively, certification should be valid for at least

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6 months. The lot by lot testing requirement should be exempted for imported vehicles with UNECE/ECE/EC WVTAs. Lot by lot testing should be maintained only on a sample basis from time to time in case of serious suspicions of fraud.

A representative of the ACAPR agreed at an Office of Government meeting in January 2018 that a lot by lot test should be considered to test the first lot only, and subsequent lots should be subject to random testing only when necessary, or that certification should be valid for at least 6 months. MOT agreed that lot by lot testing is necessary, however the administration requirements should be eased for business. ACAPR should demonstrate leadership by imposing its view on MOT so that only the 1st lot will be subject to systematic testing, with subsequent lots tested only at random.

6. The impact of requiring CKD component parts to be tested in Vietnam on costs and administration workload

Issue: According to Decree 116, CKD components (safety parts) are to be tested in Vietnam. That means parts imported from the EU with UNECE/ECE/EC Certificates or test reports will no longer be accepted for test exemption unless the certificate or test report provided is from the country which has a Mutual Recognition Agreement with Vietnam. This is despite the fact that Vietnam National Technical Regulation on Safety and Environment Protection for Automobiles refer to UNECE/ECE/EC standards and regulations.

Recommendation: The Government should keep the current practice of accepting UNECE/ECE/EC certificates/test reports/ COP certificate for parts issued by overseas competent organisations. For imported parts, valid UNECE/ECE/EC type approval, test reports, and COP certificate should be considered sufficient evidence of a valid certificate

7. Management of imported materials for export production

Issue: The import is made based on the production plan. In practice, the production plan and the actual production will never be matched; there will always be changes in usage purpose for E31 and/or A12 in most enterprises using the scheme of importing materials under both E31 and A12. Hence, it is very complicated for enterprises involved in materials management at all stages to track by imports sources in order to meet the law's requirement of declaring in timely manner the change in usage purpose and paying taxes for E31, which leads to a lot of risks. If the enterprise wants to avoid the risk, they must import all taxable A12 then ask for tax refund, which leads to significant cash flow/workload/financial cost burdens for the enterprise.

Recommendations: We propose the Government consider revising the current customs rules in order to enable the simplification of the management process required for enterprises who import both E31 and A12. This is important to encourage exports in line with the recent policy of the Vietnamese Government on administration/tax procedure reform.

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