

CHAPTER 19 WINES AND SPIRITS

OVERVIEW

The wine and spirits (W&S) industry in Vietnam was greatly affected by the COVID-19 pandemic, which saw the suspension of product distribution, the closures of F&B and entertainment outlets, and a halt to tourism and hospitality amidst prolonged border closures and other restrictions. Prior to the COVID-19 pandemic, sales volumes of W&S in Vietnam were split fairly evenly between on-premises and off-premises channels. The onset of the pandemic severely impacted on-premise sales volumes which fell by almost half between 2019 and 2021, which was only partly offset by an 8% increase in off-premises sales volumes. W&S enterprises have suffered long-term and continuous impacts on sales during and after the pandemic when consumer demand for W&S products decreased as compared to the pre-COVID-19 period. The international W&S contribution to Vietnam's GDP fell from US\$398 million to US\$282 million.¹ Even though the situation has slowly improved since, W&S companies are still recovering from the impact of the pandemic and should be supported by a stable legal, regulatory, and business environment.

W&S form only a small fraction of Vietnam's alcohol market, with spirits and wines making up 0.8% and 0.3% of total alcohol sales volume respectively, compared to an overwhelming 98.6% occupied by beer.² Despite its small market share in the beverages industry especially relative to beer, the international W&S industry makes an important contribution to Vietnam's economy. According to a recent study by Oxford Economics (2023), the sales and distribution of international W&S contributed US\$282 million to Vietnam's GDP in 2022, equivalent to 0.6% of total hospitality, retail, and wholesale GDP. It also supported a total of 65,600 jobs across the country and generated US\$253 million in tax revenues.³

The economic contribution of international W&S is further supported by a global premiumisation trend⁴ that has also emerged in Vietnam. Vietnam's increasingly prosperous population and the government's promotion of high-quality tourism have led to growing demands for premium W&S products from both resident consumers and foreign tourists. By catering for these demands, international W&S can unlock spending across a wider range of activities, which leads to local economic benefits including new local business opportunities, high-value jobs, higher profit margins, and tax receipts in the hospitality and retail industry.

A major and longstanding issue for Vietnam's W&S industry is the illicit alcohol trade, which poses material risks to Vietnamese society, especially consumer health. According to estimates by the WHO⁵, in 2019, 57% of all alcohol consumed in Vietnam was unrecorded⁶, meaning that tax contributions were made only on 43% of total sales⁷. To address this, the Government should modernise regulations to provide flexibility and innovation within the regulatory framework to recognise changes in industry practices and consumer expectations. In the alcohol sector, benefits from bringing Vietnam's system in line with most OECD countries will include more choices and better-quality products for consumers through a competitive market, online and offline, as well as present equitable opportunities for small businesses and entrepreneurs to compete. These policy changes will ensure a uniform approach across product categories, importers, and manufacturers, ultimately expediting market access for small enterprises and new market entrants contributing to maximizing the economic gains from the W&S industry, developing a growing ecosystem, boosting Vietnam's tourism and hospitality sectors, and fight more effectively against the illicit trade in alcohol.

1 International Wine and Spirits in ASEAN: The Economic Contribution of the International Wine and Spirits Value Chain in Thailand and Vietnam, July 2023, Oxford Economics ("W&S Oxford Study 2023"), page 17 and page 48.

2 W&S Oxford Study 2023, page 17.

3 W&S Oxford Study 2023, page 47.

4 'Premiumisation' describes the broad trend of consumers 'trading up' in their consumption choices and purchasing more premium products.

5 World Health Organization Global Health Observatory (WHO-GHO), 2022. Available at [https://www.who.int/data/gho/data/indicators/indicator-details/GHO/total-\(recorded-unrecorded\)-alcohol-per-capita-\(15-\)-consumption](https://www.who.int/data/gho/data/indicators/indicator-details/GHO/total-(recorded-unrecorded)-alcohol-per-capita-(15-)-consumption), last accessed on 6 November 2023.

6 'Unrecorded' alcohol refers to alcohol that is not accounted for in official statistics on alcohol taxation or sales in the country where it is consumed. This is because it is usually produced, distributed, and sold outside the formal channels under government control.

7 "Towards an ASEAN Community: Tackling Illicit Alcohol in Southeast Asia, 2023", EUABC, TRACIT, APISWA, AACs ("ASEAN Illicit Trade Report 2023"), page 13.

I. SPECIAL CONSUMPTION TAX

Relevant authorities: Ministry of Finance (MOF)

Issue description

Economic efficiency, equity, enforceability, and compliance are the general principles that guide taxation policy. Inconsistencies exist in the current alcohol taxation regime when viewed against these principles. For example, in 2016, the Special Consumption Tax (SCT) reform introduced three annual increases in the Ad Valorem (AV) tax rate. It also changed the tax base on imported products from the cost, insurance, and freight (CIF) price to the importers' selling price. This reform has had a significant impact on imported W&S and nullifies the benefits of EVFTA's commitments on tariff and tax reductions, which entail a tariff dismantling schedule for W&S over the course of seven years, and as such is supposed to develop trade.

The Government approved the 2023-2025 legislative agenda of National Assembly XV on 16 December 2021, which confirmed yet another revision of the Law on Special Consumption Tax⁸. Following a period of public consultations and appraisal by the Ministry of Justice (MOJ), subsequently, the Government on 28 July 2023 approved Resolution 115⁹, which, inter alia, requested that MOF submit a revised Law on Special Consumption Tax proposal after studying and developing a hybrid tax model for alcohol, in accordance with the Prime Minister's Tax Reform Strategy until 2030¹⁰ and in line with international tax reform trends. The MOF is due to submit a revised proposal for the SCT for inclusion in the 2024 Legislative Agenda. According to this roadmap, the National Assembly's 1st discussion will be held in May 2024 and approved in October 2024 at the earliest.

Potential gains/concerns for Vietnam

Vietnam has made a significant commitment to improve the business environment, enhance national competitiveness, and actively adhere to multilateral trade agreements, especially after COVID-19. We are concerned that any change in domestic regulations at this stage – including tax – will hinder these efforts and cause unexpected impacts on the country's economic development while also preventing enterprises from recovering from the pandemic.

Also, the EVFTA brings significant benefits to businesses, especially in terms of tariff reductions. Any increase of SCT on items imported from the EU causes concern about the realisation of the benefits of this agreement. In the spirit of the General Agreement on Tariffs and Trade (GATT), specifically the Most-Favoured-Nation (MFN) rule and the National Treatment principles, every member country should apply fair tax policies without discrimination between countries or between domestically produced and imported products. Therefore, tax policies need to ensure an equal compliance level and avoid discrimination between imported and domestic goods.

Stable and predictable tax policies are crucial for business competitiveness, as they underpin investment planning. However, Vietnam's Law on Special Consumption Tax has seen frequent revisions of five versions since 2003, impacting the political and economic landscape and eroding business confidence. Discussions often center around raising the AV tax on alcohol for health reasons, but the comprehensive evaluation of the social and economic impacts of these reforms is yet to be conducted. Notably, a substantial portion of liquor consumed remains unrecorded¹¹, and combined with higher SCT, this will further widen the price gap between legal and illicit products, encouraging illicit activities and jeopardizing consumer health, resulting in an estimated fiscal loss of US\$441 million in 2019¹².

Moreover, the current SCT AV model obstructs the premiumisation of the market, which is pivotal for economic growth, whereby consumers drink less but drink better. The government should explore policies that combat the illicit market and bridge tax disparities between legal and illicit products. This approach aligns with the trend toward higher-quality consumption, coinciding with rising incomes and the potential for sustainable tourism. It promises economic benefits and an enhancement of public health and safety.

8 Resolution No.16/NQ-CP dated 9 February on Thematic session on legislation drafting in January 2023.

9 Resolution 115/NQ-CP dated 28 July 2023 of the Government on thematic session on legislation drafting in July 2023 (Resolution 115).

10 Decision 508/QĐ-TTg dated 23 April 2022 of the Prime Minister's approval of tax reform strategy until 2030.

11 Page 13 "ASEAN Illicit Trade Report 2023."

12 Page 12 "ASEAN Illicit Trade Report 2023."

On 28 July 2023, we welcomed Resolution 115 as an opportunity for MOF to explore a shift to a more suitable tax system that brings it closer in line with international best practices. This is in line with recommendations in reports of the Central Institute for Economic Management (CIEM) on “An Overview of the Tax System for the Alcoholic Beverage Industry and Policy Recommendations” published in 2020 and the “Quantitative Assessment of the Impacts of Excise Tax on the Alcoholic Beverage Industry”¹³ report published in 2022.

The MOF should consider a new tax system based on pure alcohol content in beverages. This would ensure fairness among products and provide more stable and predictable budget revenues while also being simpler and less costly to administer. This approach increases consumer choice, decreases the amount of carry-in from overseas and direct personal shipment from abroad, and links price to alcohol content instead of value, incentivizing moderate consumption and recognizing that all alcohol affects the body the same way, regardless of the type or price of the product. The hybrid tax system is more complex, which may lead to high administrative costs. However, it can help achieve additional goals of preventing non-drinkers from starting to consume alcohol. A combined tax method could be considered in the transition towards a single volumetric tax rate for all alcoholic beverages, the ideal system for liquor taxation.

Recommendations

- No further changes to the SCT should be implemented until 2026, to allow the Government to consider and develop evidence-based taxation policies to meet its objectives on public health and stable income for the State budget properly and comprehensively.
- Taking the consideration how to reform SCT, the hybrid methodology (a combined AV and specific tax model) should be studied for the W&S industry to meet these objectives. This is also in line with the Government’s Tax Reform Strategy until 2030 and Resolution 115.
- EuroCham Wine & Spirits Sector Committee stands ready to support these efforts, including a study of the feasibility of the SCT hybrid model in Vietnam, and sharing experiences and best practices from other markets to develop this model for the W&S industry in Vietnam. This would help to set a reasonable and suitable tax methodology with the country’s living standards and to achieve the objectives of tax revenues, business development, and public health protection.
- The MOF, in conjunction with the relevant agencies, should study measures that would address the considerable problem of unrecorded alcohol in Vietnam such as through stronger coordination and law enforcement, protecting consumer safety, and building consumer awareness, with support from the W&S industry. The reduction in unrecorded alcohol will reduce the loss in tax collection from the abovementioned 57% of all alcohol consumed in Vietnam.

II. ADVERTISING AND PROMOTION

Relevant authorities: Ministry of Industry and Trade (MOIT), Ministry of Culture, Sports, and Tourism (MOCST), Ministry of Health (MOH)

Issue description

Inconsistency between the regulations

Vietnam’s approach to restricting the advertising and promotion of W&S products has evolved over nearly 20 years. Advertising has been viewed as a cultural influence and, as such, consequently falling within the purview of the MOCST. Meanwhile, promotion, as a commercial activity, sits under MOIT. While MOH is an extremely important influencer due to its mandate on health protection, it does not have the official jurisdiction to enforce or drive the revision of existing regulations on the advertising and promotion of W&S products.

¹³ “Research Report: Quantitative Assessment of Impacts of Excise Tax on the Alcoholic Beverage Industry”, *Central Institute for Economic Management (CIEM)*, 10 October 2023. Available at: <<http://ciem.org.vn/Content/files/Bao%20cao%20danh%20gia%20dinh%20luong%20tac%20dong%20cua%20thue%20tieu%20thu%20dac%20biet%20doi%20voi%20do%20uong%20co%20con.pdf>>, last accessed on 10 October 2023.

Restrictions on advertising and promoting W&S were originally dispersed across various legal documents, notably the implementing regulations of the Ordinance on Advertising¹⁴, the Law on Commerce¹⁵, and the Law on Advertising¹⁶.

- A ban was introduced on advertising products over 30 percent ABV in the Law on Commerce, which was tightened in 2012 with a ban for products over 15 percent ABV by the Law on Advertising.
- Promotional rules have been comparatively consistent, having been banned by the Law on Commerce.

This was not a conflict until the Law on Prevention of Beer and Spirits' Harmful Effects was enacted in 2019¹⁷. This synthesised all regulatory measures to address the harmful abuse of alcohol, including advertising and promotion rules. In particular, the Law on Prevention of Beer and Spirits' Harmful Effects only bans the promotion of alcoholic beverages above 15% ABV (Alcohol by volume). Nevertheless, in practice, MOIT still upholds the ban on the promotion of all W&S products, referencing the restrictions in the Law on Commerce on banning the promotion of all W&S. At the same time, the Law on Prevention of Beer and Spirits' Harmful Effects introduces additional restrictions on time, location, and content of advertisements for the W&S products below 5.5% ABV while the Law on Advertising does not stipulate such restrictions on advertisement contents for W&S products under 15% ABV.

Notably, these inconsistencies between the regulations in the Law on Commerce, Law on Advertising, and Law on Prevention of Beer and Spirits' Harmful Effects have given rise to regulatory confusion and curtailed legitimate business activities by the W&S industry in practice. Also, the W&S industry is a highly regulated sector in Vietnam which has historically been subjected to constant regulatory changes in the areas of licensing and operational requirements, customs, and tax policies. Taken together, all these measures adversely impact the industry's ability to contribute to Vietnam's tax base and socio-economic development.

Issues surrounding the restrictions on the promotion of W&S products:

The problem with W&S promotion restriction stems from a conflicting provision in the Law on Commerce. According to Article 100, the following promotional activities are banned:

- Promotion of commercially banned goods and services; commercially restricted goods and services; goods not yet allowed for circulation; services not yet allowed to be provided (Article 100.1).
- Promotion or use of tobacco or W&S with an alcohol content of 30% ABV or more for promotion in any form (Article 100.4).

Then, in 2006, Decree 59¹⁸ guiding the Law on Commerce was issued with the list of commercially restricted goods, which included all W&S products. Therefore, given Article 100.1, now all W&S products are banned from promotion, making Article 100.4 redundant.

The Law on Prevention of Beer and Spirits' Harmful Effects amended the 30% ABV threshold in Clause 100.4 of the Law on Commerce to 15% ABV. However, the Law on Commerce's ban on the promotion of commercially restricted goods remains.

As the MOCST is currently working on a draft dossier to propose amendments and supplements to the Law on Advertising, there will be key policy changes on advertisement content and duration, as well as the responsibilities of entities that deliver advertisements. The amendment of this law, however, should ensure not only consistency across different regulatory frameworks on advertisement activities but also allow businesses to contribute to economic development while protecting consumer health.

14 Ordinance 39/2021/PL-U8TVQH10 dated 16 November 2021 of the Standing Committee of the National Assembly on Advertising (Ordinance on Advertising).

15 Law 36/2005/QH11 dated 14 June 2005 of the National Assembly on Commerce (Law on Commerce).

16 Law 16/2012/QH13 dated 21 June 2012 of the National Assembly on Advertising (Law on Advertising).

17 Law 44/2019/QH14 dated 14 June 2019 of the National Assembly on prevention and control of harmful effects of alcoholic beverages (Law on Prevention of Beer and Spirits' Harmful Effects).

18 Decree 59/2006/ND-CP dated 12 June 2006 of Ministry of Trade detailing the Commercial Law on goods and services, banned from business, subject to restrictions and condition (Decree 59).

Such an approach to law amendments has proven to be feasible and successful, as evidenced by the case with e-commerce regulations on alcoholic beverages. These regulations permit businesses to engage in the digital commerce of alcohol while imposing strict measures to combat alcohol abuse and restrict access to individuals under the legal drinking age (18 years old) in Vietnam. As legitimate producers and distributors in the wine and spirits industry, we actively collaborate with the Government and partners to facilitate responsible alcohol e-commercials. In November 2022, we launched an online training tool aimed at educating all alcohol e-commerce stakeholders on pertinent regulations, fostering a responsible digital commerce environment that encourages moderation, prevents underage sales, and addresses alcohol-related harm.

Potential gains/concerns for Vietnam

The beer, wine, and spirits markets are strictly regulated not only in Vietnam but globally. The increasingly strict advertising regulations on W&S in Vietnam, through the reduction of the ABV limit and the enactment of the Law on Prevention of Beer and Spirits' Harmful Effects, have historically been based on health concerns and social issues stemming from alcohol abuse. Acknowledging these concerns and utilizing the effectiveness of a 'whole-of-society' approach¹⁹, our industry recognises that we have a critical role to play in helping to reduce the harmful use of alcohol and changing harmful consumption in Vietnam. We are proud to have partnered with Vietnamese authorities in harm-reduction and awareness-raising programs aimed at preventing alcohol abuse and promoting responsible drinking, as well as strengthening enforcement against drink-driving. In 2022, the Vietnam Association for Responsible Drinking (VARD) and the Asia-Pacific Spirits and Wines Alliance (APISWA) successfully launched the "Power of No" campaign. This is a public awareness campaign targeting young adults across Southeast Asia that aims to save lives, change the culture around drink-driving, and normalise responsible drinking for young people of legal drinking age. Done in partnership with the Automobile Association of Vietnam (AAV) and the Vietnamese Motorsports Association LLC, the campaign has reached close to nine million young adults in Vietnam since it was launched in 2022. We will continue this campaign in 2023 onwards.

Both MOCST and MOIT are conducting reviews on the revision of the Law on Commerce and Law on Advertising respectively, which are timely and welcome. In May 2023, the MOCST invited stakeholders to submit comments on the Law on Advertising, which they are in the process of amending. At first sight, the definition of "advertisement" and "public" in the Law on Advertising should be reconsidered so as not to mix up the product advertisement with the activities of product introduction and brand development in the course of trade promotion which are the backbone of any business and are allowed by the Law on Commerce. Also, the amendment to the Law on Advertisement should take into account the consideration of cross-border advertisement to ensure consistency across all advertisement-related rules.

Recommendations

- Ensure consistency in the revisions of provisions on advertising and promotion of W&S products in the Law on Advertising and Law on Commerce, respectively, with the Law on Prevention of Beer and Spirits' Harmful Effects so as not to introduce further regulatory burdens on the W&S industry.
- Remove the ban on the promotion of all W&S products in the Law on Commerce. These products should instead be subject to the relevant advertising restrictions under the Law on Prevention of Beer and Spirits' Harmful Effects instead of Law on Commerce i.e., promotion of alcoholic beverages below 15 percent ABV should be permitted.
- Review the definition of "advertisement" in the Law on Advertisement to encompass activities conducted by W&S companies, including business and product introduction. This expansion will help establish a clear legal framework for these activities while also promoting the responsible consumption of wine and spirits.
- To promote awareness of responsible drinking and enhance social responsibility, it is recommended to adopt a balanced and inclusive approach to regulating alcoholic products, rather than rely only on ABV. Advertising restrictions should be made on the basis of where and how the advertisement is placed to give more information to consumers on which products are suitable and how alcohol should be consumed. This approach aims to provide consumers with more comprehensive information about suitable products and

¹⁹ UN Political Declaration on NCDs, 2018, art. 44 (b) - Encouraging economic operators in the area of alcohol production and trade, as appropriate, to contribute to reducing harmful use of alcohol in their core areas, taking into account national religious and cultural contexts.

responsible alcohol consumption. It underscores the importance of public health and awareness, promoting responsible drinking practices, irrespective of the ABV of the beverage.

- › Finally, such a complete ban on advertisement of W&S products above 15% ABV further leads to an increase in unrecorded alcohol products while threatening the operations of legitimate W&S businesses because consumers are not aware of authentic W&S products and licensed sales outlets. The absolute ban should be revised to the specific ban on which advertisement channel and should be distinguished from mentoring activities for reducing alcohol abuse and increasing the awareness of responsible drinking.

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