



2021 Tax and Legal Institute

# 2021 Tax & Legal Institute

***March To New Normal***

**11 - 12 November 2021, 13:00 — 17:00**

KPMG in Vietnam

# Speakers



**Mr. Warrick Cleine**  
Chairman and CEO,  
KPMG in Vietnam & Cambodia



**Mr. Nguyen Van Phung**  
Head Bureau of Large Enterprise Management  
General Department of Taxation



**Ms. Le Thi Kieu Nga**  
Partner, Head of Corporate Tax  
KPMG in Vietnam



**Ms. Nguyen Thu Huong**  
Partner, Tax Disputes Resolution & Controversies  
KPMG in Vietnam



**Mr. Ta Hong Thai**  
Partner, Corporate Tax  
KPMG in Vietnam



**Ms. Ho Thi Bich Hanh**  
Partner, Corporate Tax  
KPMG in Vietnam



**Mr. Nguyen Ngoc Thai**  
Partner, Corporate Tax  
KPMG in Vietnam



# Speakers



**Hoang Thuy Duong**

Partner, Head of Tax  
KPMG in Vietnam



**Mr Nhan Huynh**

Partner, Head of Integrated International Tax  
KPMG in Vietnam



**Ms. Andrea Godfrey**

Partner, Head of Global Mobility Services  
KPMG in Vietnam



**Mr Nguyen Thanh Hoa**

Partner, KPMG Law in Vietnam



**Ms Bui Thi Thanh Ngoc**

Partner, KPMG Law in Vietnam



**Ms Tran Thi Thuy Ha**

Partner, Transfer Pricing  
KPMG in Vietnam

# Beyond the Pandemic: Vietnam's Economic Outlook



**Warrick Cleine**

Chairman and CEO; Managing Partner - Deals, Tax & Legal  
KPMG in Vietnam and Cambodia

“

**The ravages of the COVID-19 pandemic have taken a heavy human toll, not just in terms of afflicting lives and human well-being, but also by impacting incomes and livelihoods... ”**







Source: <https://lsvn.vn/tp-hcm-gian-cach-toan-thanh-pho-theo-chi-thi-16-tu-00h-ngay-0971625698672.html.html>



Source: <https://vietnamnet.vn/vn/thoi-su/nguoi-dan-tp-hcm-xep-hang-cho-tiem-vac-xin-vero-cell-765885.html>



Source: <http://baochinhphu.vn/Suc-khoe/Viet-Nam-tiep-nhan-26-trieu-liu-vaccine-ngua-COVID19-tu-Chinh-phu-Duc/447874.vgp>

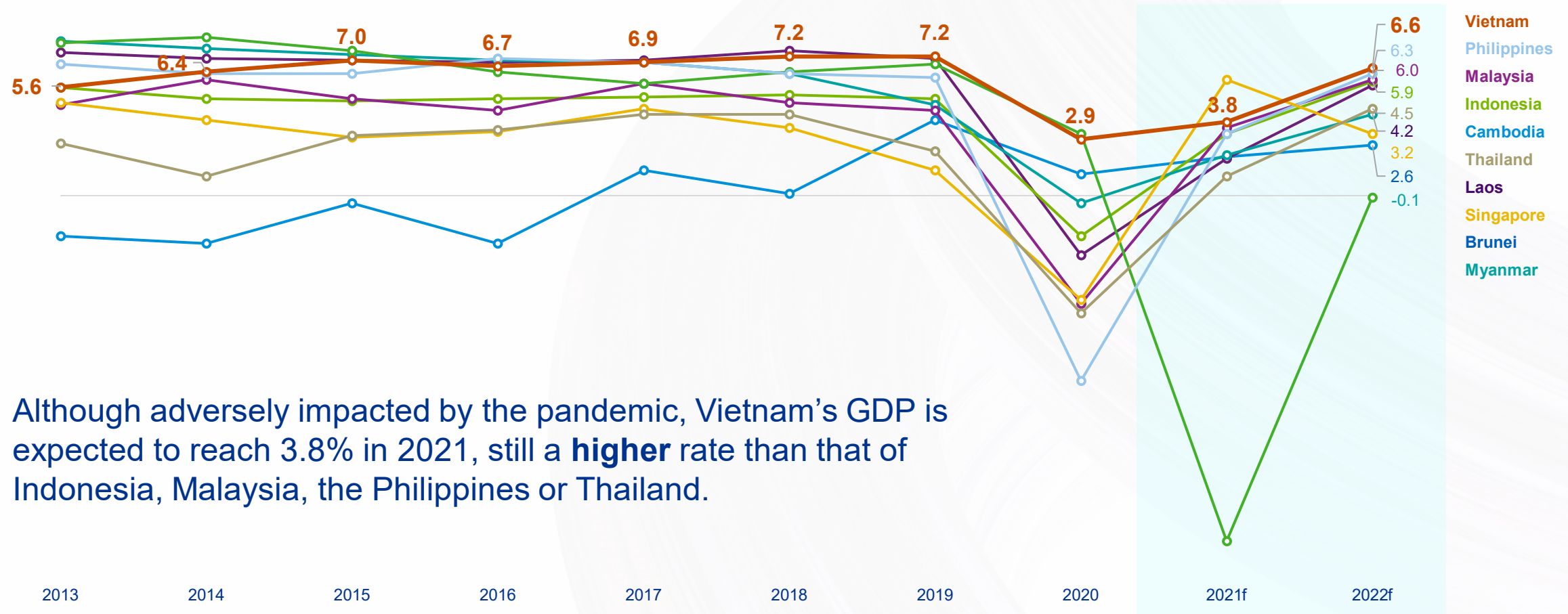
“

**People find it difficult to see past their difficulties but then the restrictions are lifted and it all bounces back very quickly.”**





# Vietnam continues to grow faster than the regional average, but vaccine rollout is critical to maintaining its top-spot



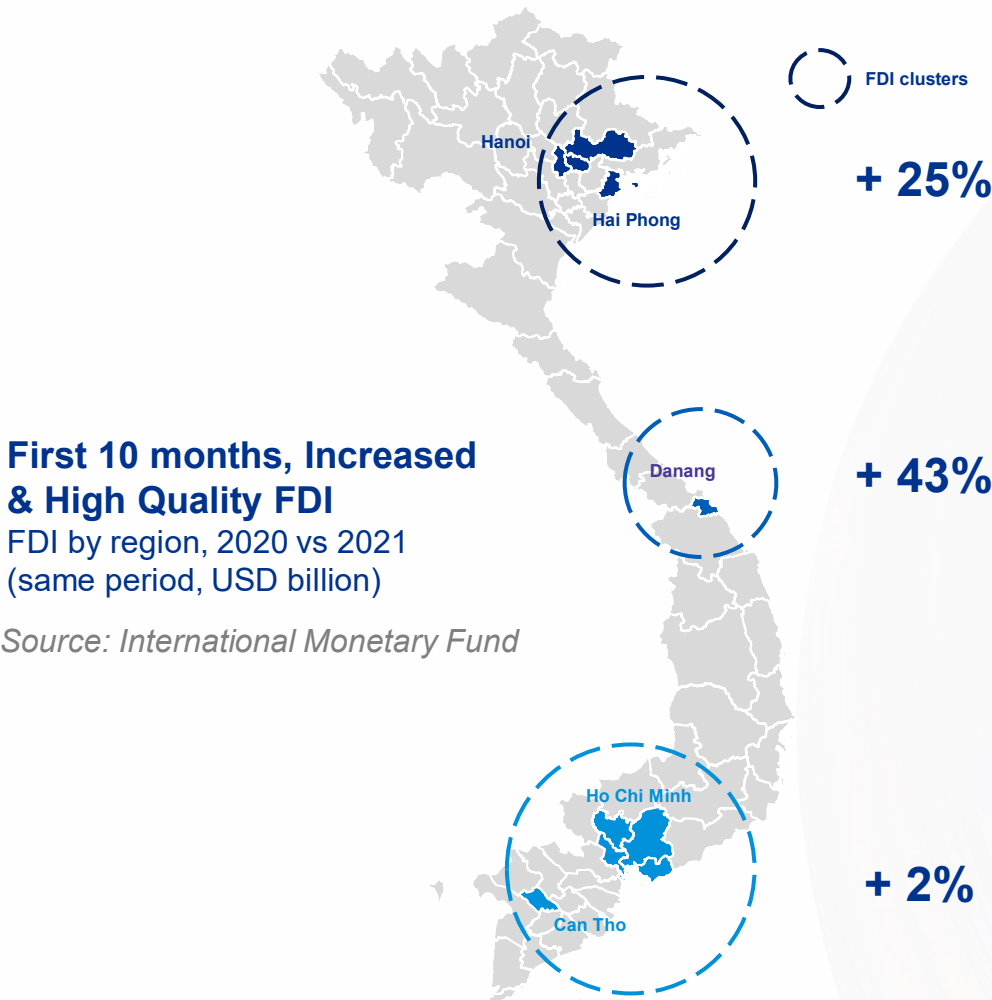
Although adversely impacted by the pandemic, Vietnam's GDP is expected to reach 3.8% in 2021, still a **higher** rate than that of Indonesia, Malaysia, the Philippines or Thailand.

Source: International Monetary Fund

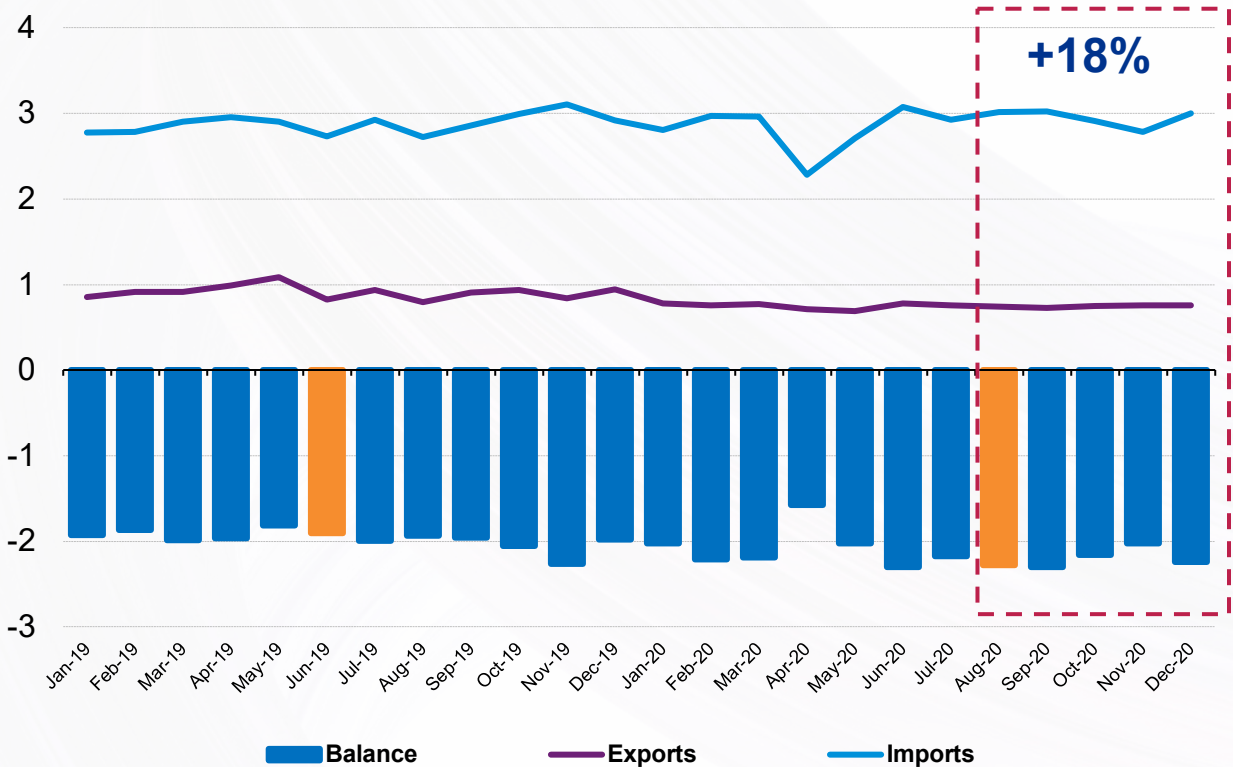




# Rising relevance of Vietnamese operations for foreign companies



**First year of EU-Vietnam trade deal fulfills promise**  
EU Trade in Goods with Vietnam, 2019-2020 (EUR billion)



Source: Eurostat (online data code: ext\_st\_eu27\_2020sitc)



# Vietnam's competitive strengths in manufacturing, along with domestic reforms are driving people to relocate here\*

## Vietnam and the global supply chains

FTA with/ between	Vietnam	Malaysia	Thailand	Philippines	Indonesia	Cambodia	China
ASEAN	✓	✓	✓	✓	✓	✓	✗
ASEAN-China	✓	✓	✓	✓	✓	✓	✓
India	✓	✓	✓	✓	✓	✓	✗
Korea	✓	✓	✓	✓	✓	✓	✓
Japan	✓	✓	✓	✓	✓	✓	✗
CPTPP	✓	✓	✗	✗	✗	✗	✗
EU	✓	○	○	○	✗	✗	✗
UK	✓	✗	✗	✗	✗	✗	✗
US	✗	○	○	✗	✗	✗	✗

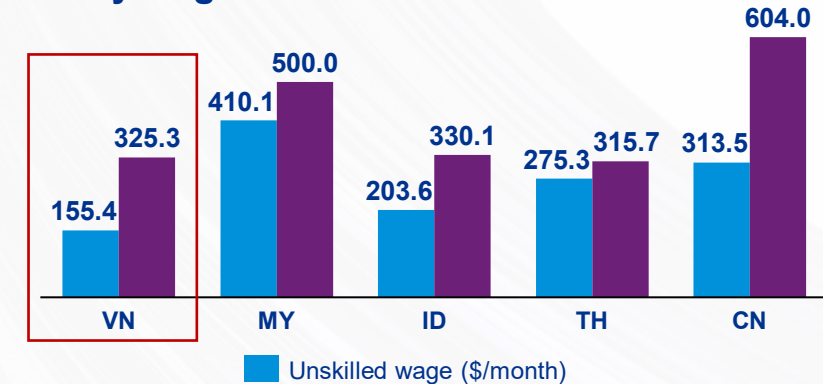
  

Legend	✓	To be ratified	○	In negotiations
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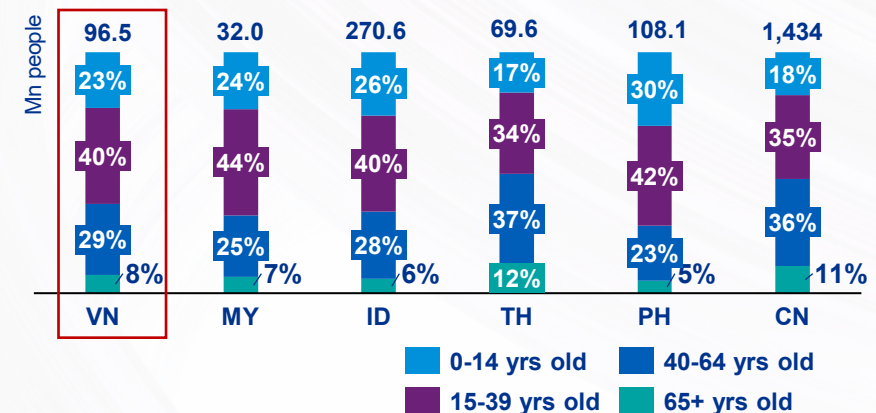
- The large labour pool of Vietnam characterised by younger, eager to learn and low cost has been a key determinant in attracting foreign investment into the country
- Additionally, Vietnam has flexible labor market with low wages, easy hiring, more business friendly laws and flexibility in wage determination

Source: Business Monitor

## Average monthly wage of skilled versus non-skilled worker – 2019

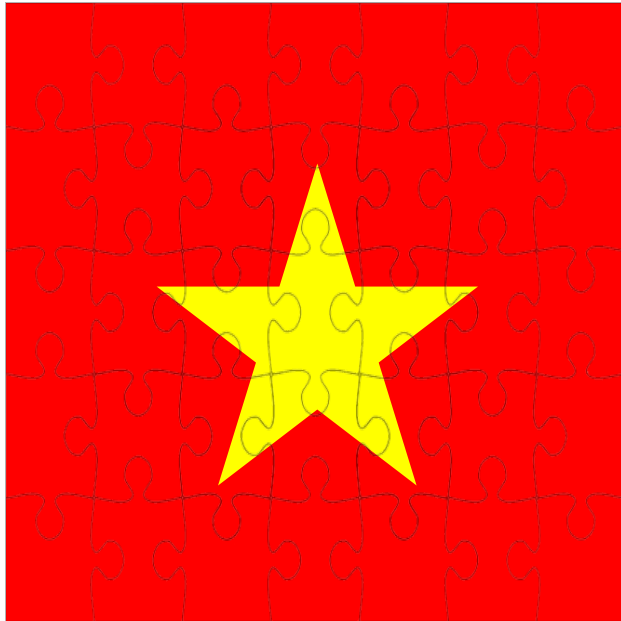


## Population by age group in 2019





# What to watch for in 2021 & 2022



A still growing but more complex Vietnam



Business models matter, not copycats



Rethinking talents



Regulations still challenge MNCs



Vietnam's fast changing global role

- 1 Evolving COVID situation:** Covid will remain the primary determinant of global economic fortunes for the foreseeable future
- 2 Growing importance of Vietnam in global trade:** Vietnam has significantly gained in global relevance in recent years. Companies will have more complex business questions
- 3 Acceleration of inbound, driven by pent-up capital:** Global capital flows slowed for 2021. Now that much of the world is returning to normal, we can expect an acceleration of inbound capital
- 4 Understand Initiatives** taken by Vietnamese government and general trends are in general aligned to the main demands of businesses in Vietnam







OECD

BEPS 2.0



ESG

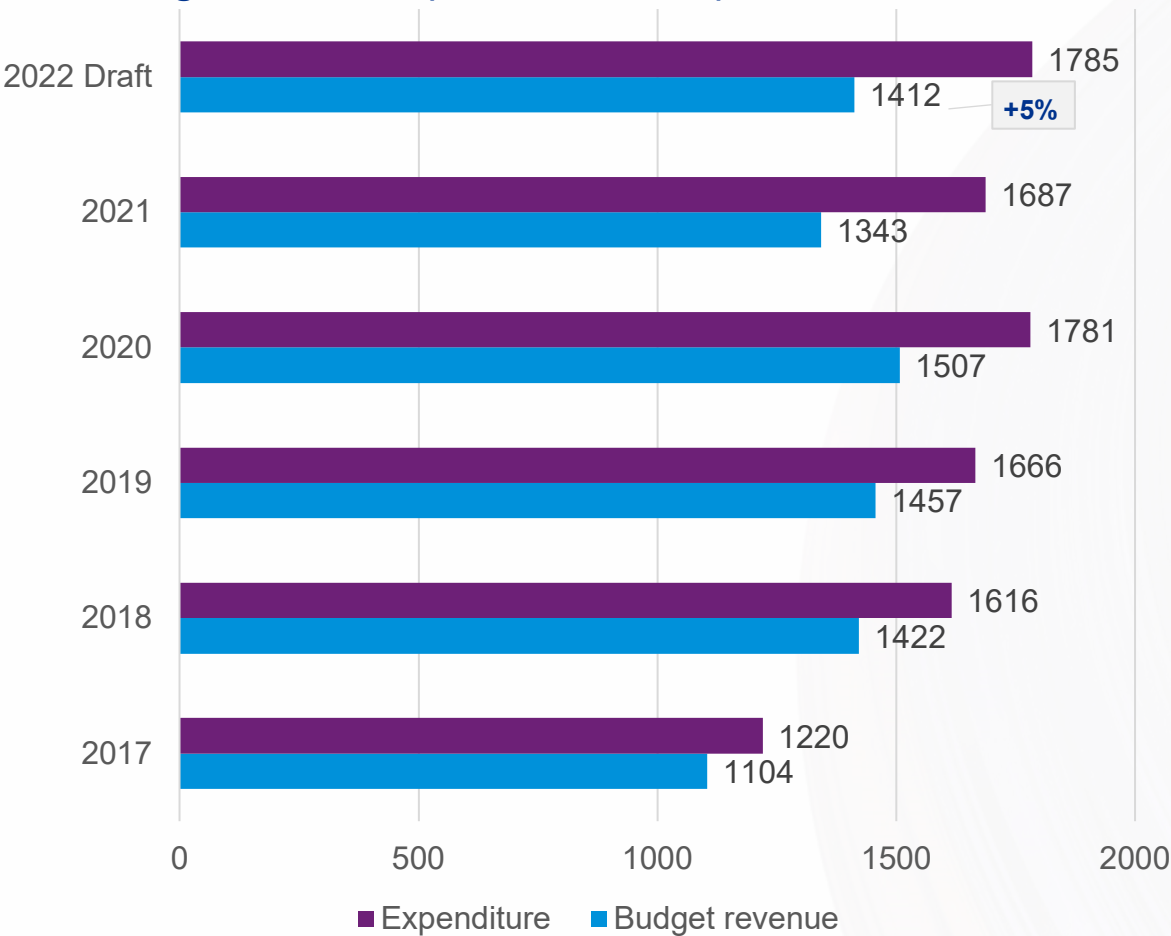


FISCAL STIMULUS



# Facing the crisis: the role of tax in dealing with COVID-19

State Budget collection (VND '000 billion)



Actual tax revenue in the first 10 months of 2021

Items	% compared to target (approximate)
Actual revenue	79.30%
Corporate Income Tax (CIT)	76.00%
Personal Income Tax (PIT)	92.7%

Tax inspections/audits 2021



Source: General Department of Taxation



# Our Tax & Legal Institute this year...



## Priorities of Business Leaders in the New Reality

➡ In the New Reality the threats to business growth have changed: Greatest risks are according to business leaders ...

	March 2021	August 2020	+/- %
Cyber security risk	<b>18%</b>	10%	<b>+8%</b>
Regulatory risk	<b>14%</b>	5%	<b>+9%</b>
Tax risk	<b>14%</b>	4%	<b>+10%</b>
Supply chain risk	<b>12%</b>	18%	<b>-6%</b>
Environmental/climate change risk	10%	12%	-2%
Operational risk	10%	5%	+5%
Emerging/disruptive technology risk	6%	7%	-1%
Interest rate risk	6%	2%	+4%
Return to territorialism	5%	14%	-9%
Reputational risk	3%	2%	+1%
Internal unethical culture risk	1%	1%	-
Talent risk	1%	21%	-20%



## Why it matters for your business

➡ Understand key changes & Initiatives taken by the Vietnamese government & impact on your business





# Speech from Representative of GDT



**Mr. Nguyen Van Phung**

Head Bureau of Large Enterprise Management  
General Department of Taxation



2021 Tax and Legal Institute

# New Tax Policies



**Ms. Le Thi Kieu Nga**

Partner  
Head of Corporate Tax  
KPMG in Vietnam



# New Tax Policies

**1**

**CIT incentives for special projects**

**2**

**Tax Administration**

**3**

**COVID-19 support measures**

**4**

**VAT refund for EPE conversion**

**5**

**New PIT policies**

**6**

**Incentives for Supporting Industries**



# New Tax Policies

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# Special investment incentive

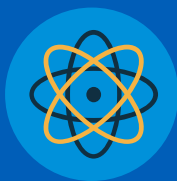
## Decision 29 - effective from 6 Oct 21



### Applicable project



new/expansion investment projects in innovation, R&D centers with capital from 3,000bil, national innovation center



mega projects in special preferential sectors with capital from 30,000bil



### 03 CIT Incentive Schemes

**30** years – 9%, 5E + 10R

**33** years – 7%, 6E + 12R

**37** years – 5%, 6E + 13R



# CIT incentive for scientific/technological enterprises

## Circular 03 effective from 1 Mar 21



4 years	9 years
Exempt	50% reduction
No incentivized CIT rate	



- Failure to reach 30% revenue criterion?
- The project currently applying or fully utilized CIT incentive based on other conditions, STE incentive for remaining period.





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# Tax Administration



# Tax Administration - Circular 80/2021/TT-BTC

## Centralization of tax declaration and allocation of tax payment

- Applicable: business operation more than 1 provinces and do centralized accounting
- Some specific cases for CIT/VAT allocation:
  - Production dependent unit
  - Electronic lottery business
  - Real estate transfer
  - Construction activities (only applicable to VAT), and
  - Hydropower plants located in various provinces
- For incentivized activities: No allocation – CIT liabilities to be determined based on separate P&L



## DTA relief notification procedures

- Not purely self-assessment, but subject to approval from the tax authority

## Application of Circular 80

- Tax finalization for tax year 2021.





# Invoice management - Circular 78/2021/TT-BTC



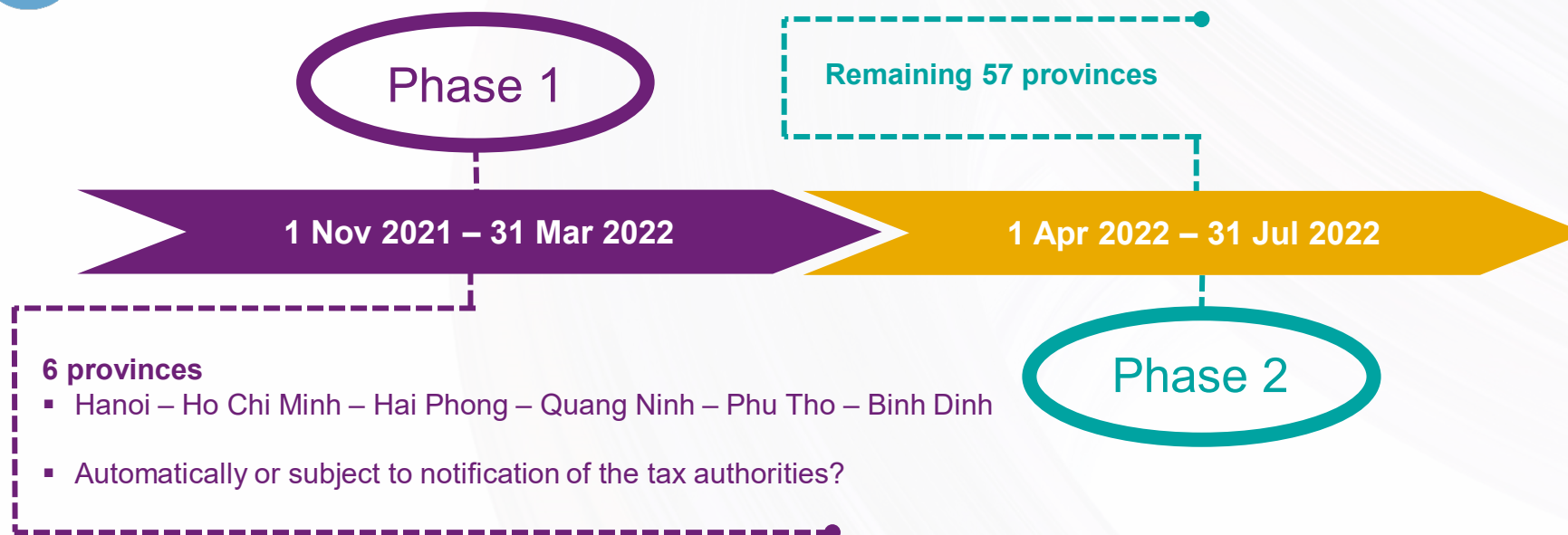
**Mandatory:** 1 July 2022



**Delay application:** Maximum 12 months from 1 Jul 2022 for some limited business individuals/households



**Earlier application:** Mandatory for taxpayers in certain provinces



# New Tax Policies

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# COVID-19 support measures (1/4)

**Decree 52/NĐ-CP dated 19 April 2021**

**Decree 44/NĐ-CP dated 31 March 2021**

**Resolution 68/NQ-CP dated 1 July 2021**

**Decision 23/QĐ-TTg dated 07 July 2021**

**Resolution 105/NQ-CP dated 9 September 2021**

**Resolution 116/NQ-CP dated 24 September 2021**

**Decision 28/QĐ-TTg dated 01 October 2021**

**Resolution 406/QH15-NQ dated 19 October 2021**

**Decree 92/2021/ND-CP dated 27 October 2021**





# COVID-19 support measures – Tax (1/2)



Broaden scope of eligible taxpayers compared to Decree 41 for 2020



CIT: 3 months deferred for CIT payable of Quarter 1 and Quarter 2/2021



VAT: From 3 months to 5 months deferral



PIT/VAT of business individuals/households: deferred up to 31 Dec 2021



Land rent: up to 6 months deferred from 31 May 2021

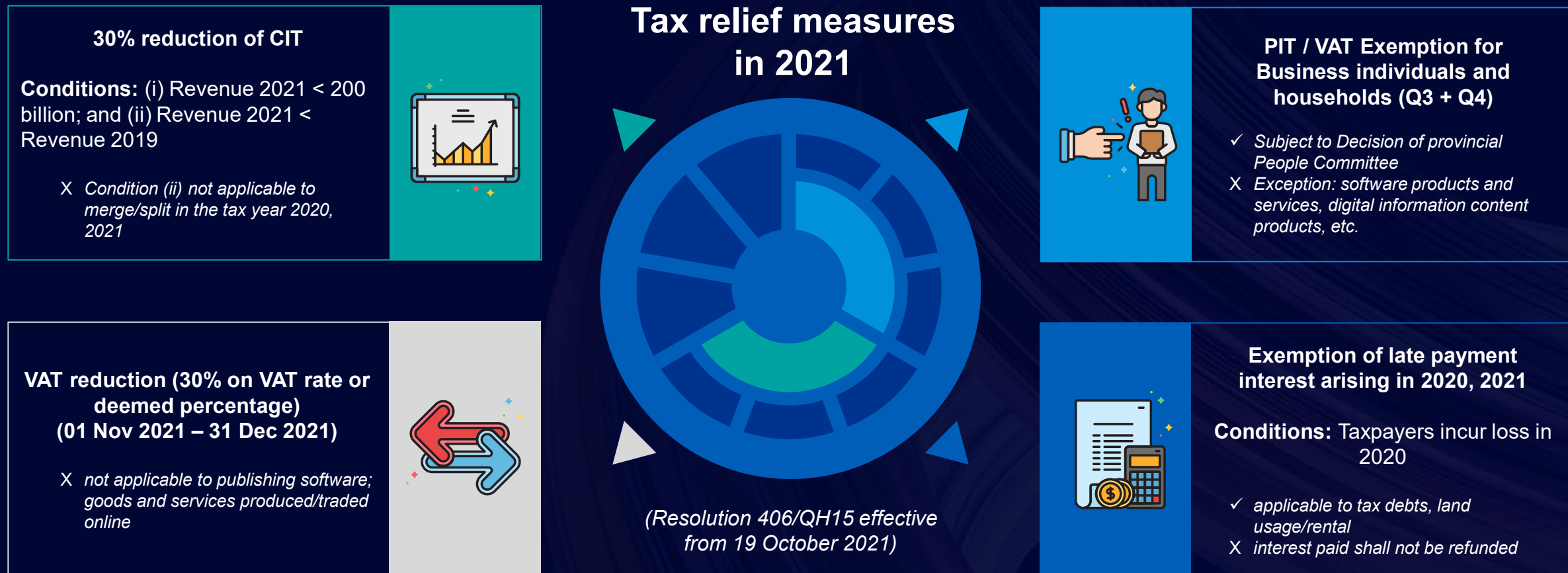


Donations and support expenses for Covid-19 prevention is CIT deductible

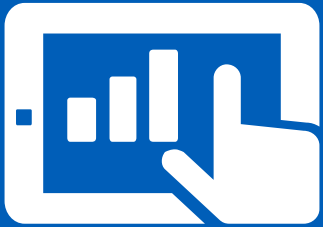
(Decree 52/2021/ND-CP, Decree 44/2021/ND-CP)



# COVID-19 support measures – Tax (2/2)



# COVID-19 support measures - Others



## Other measures

- More relaxing procedures for work permit, TRC issuance
- Increase overtime hours regardless of sector, but not exceeding 300hrs/year
- Suspend unnecessary audits/inspections

*(Resolution 105/2021/NQ-CP)*





# New Tax Policies

- 1** CIT incentives for special projects
- 2** Tax Administration
- 3** COVID-19 support measures
- 4** VAT refund for EPE conversion
- 5** New PIT policies
- 6** Incentives for Supporting Industries



# VAT Refund

EPE is not VAT liable taxpayer  
→ No VAT refund after EPE conversion



Conversion from non-EPE to EPE is not a kind of enterprise form conversion under the LOE for VAT refund eligibility

*(Official Letter 3393/TCT-CS dated 9 February 2021)*



# New Tax Policies

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# PIT for e-commerce/digital business individuals and households – Circular 40

*Broaden taxpayers:* individuals earning income from e-commerce business, digital content product and service provision, income from transfer of the right to use domain name “.vn”

*Effective from 1 August 2021*



*Supplement of tax declaration method* (besides the deemed taxation method and taxation on payment basis)

*Broaden the tax withholding organizations* including payers of trade discount etc. to business households adopting deemed method; owners of e-commerce platforms; partners of overseas digital platform providers



# PIT for Covid-19 related expenses

The expenses for quarantine as per the requirement of competent authorities in Vietnam and in overseas with respect to overseas business trip;

Meal expenses and accommodation expenses of the employees under “3T” (three on spot)

Covid-19 testing fees, purchase costs of Covid-19 testing kit to employees, the purchase costs of equipment to prevent Covid-19 at work

- Effective?
- Other Covid-19 expenses not mentioned under OL 4110?

(OL 4110/BTC-DNNCN dated 27 October 2021)



# New Tax Policies

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**Incentives for Supporting Industries**



# Supporting Industries incentives - Overview

## SI incentives

- ✓ CIT incentives
- ✓ Import duty exemptions
- ✓ Land rental reduction/exemption
- ✓ Other incentives (e.g. SME incentives, etc.)

## Prioritized products in 6 sectors



Garment &  
Textile



Footwear-  
Leather



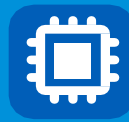
Electronics



Automobile



Mechanical  
Fabrication



High-tech

## Legal base



MOF

**Circular 96**  
CIT incentives

**Circular 21**  
Guiding incentive application

**Decree 57**  
Expanding applicable projects

2011 2015 2016 2017 2018 2019 2020 2021 2022 2023



MOIT

**Decree 111**  
SI projects & SI products

**Circular 55**  
Guiding procedures and dossiers

**Circular 42**  
Supplement reporting procedures





# Supporting Industries incentives - Overview

## Projects invested from 2015

- ✓ 10% rate for 15 years; and / or
- ✓ 4 years exemption & 9 years of 50% reduction

*(Circular 96/2015/TT-BTC; Circular 21/2016/TT-BTC)*

## Projects before 2015

- ✓ CIT incentives for SI minus (-) CIT incentives already utilised

*(Decree 57/2021/ND-CP)*



# Draft SI Decree – Key proposed changes (1/4)

## EIP definition

Increased fixed assets or designed capacity by at least 20%

## Eligible SI products

- ❖ SI definition: Supplement “processing” and “auxiliary materials”
- ❖ List of SI products:
  - ✓ Supplement the processing stages for textiles
  - ✓ Adding components and components cluster
  - ✓ Provide additional eligible products



- EIP definition consistent with the Law on CIT
- SI possibilities for currently unqualified products



# Draft SI Decree – Key proposed changes (2/4)

## New requirements for SI incentives

### Product

Supplement: **standards of well-known and reputable corporations and manufacturing companies**

### Technology & equipment

Apply new technologies **not more than 05 years** from the time of investment

### Quality control system

Meet specialized **international standards**

### Environment

Comply with **environmental standards and technical regulations.**



# Draft SI Decree – Key proposed changes (3/4)

## New requirements for SI incentives (cont.)

### Human Resource

- i. University degrees: **at least 2.5%** of the total number of employees.
- ii. Experts: **at least 1%** of the total number of employees.

### Localisation

- i. Number of Vietnamese enterprises: **at least 20%** of the number of the direct suppliers; **OR**
- ii. Value of input products provided by Vietnamese enterprises: **at least 20%** of the total value of products.



- **Pros:** Corporation standards can be used together with EU standards
- **Cons:** Challenges to meet new requirements





# Draft SI Decree – Key proposed changes (4/4)

## Timeline restriction

### SI application dossier

- ❖ Must be supplemented within 30 working days; otherwise
- ❖ Considered ineligible for incentives and returned to the enterprise.



- Re-submission of SI dossier allowed or not?
- SI dossier should be well prepared before submission





2021 Tax and Legal Institute

# Tax Authority Action & Plan



**Ms. Nguyen Thu Hong**

Partner  
Head of Tax Disputes Resolution & Controversies  
KPMG in Vietnam

# Tax Authority Action & Plan

**1**

**State Budget  
collection**

**2**

**Tax Inspection/  
Tax Audit Trend**

**3**

**Tax issues and  
action towards  
controversy**

**4**

**Tax Authority  
actions on VAT  
Refund**

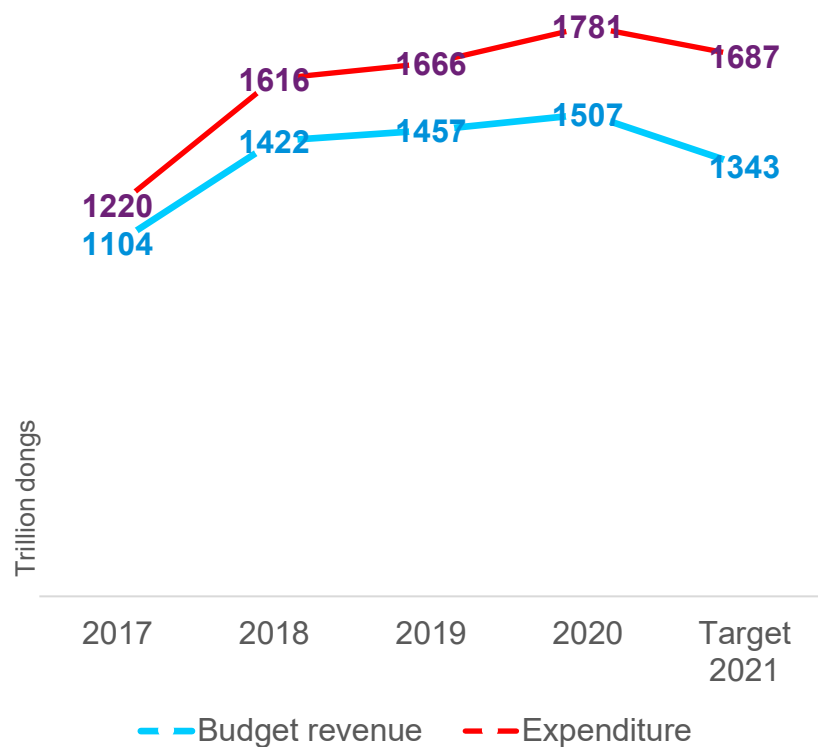
**5**

**Strengthen the tax  
administration at  
central level**

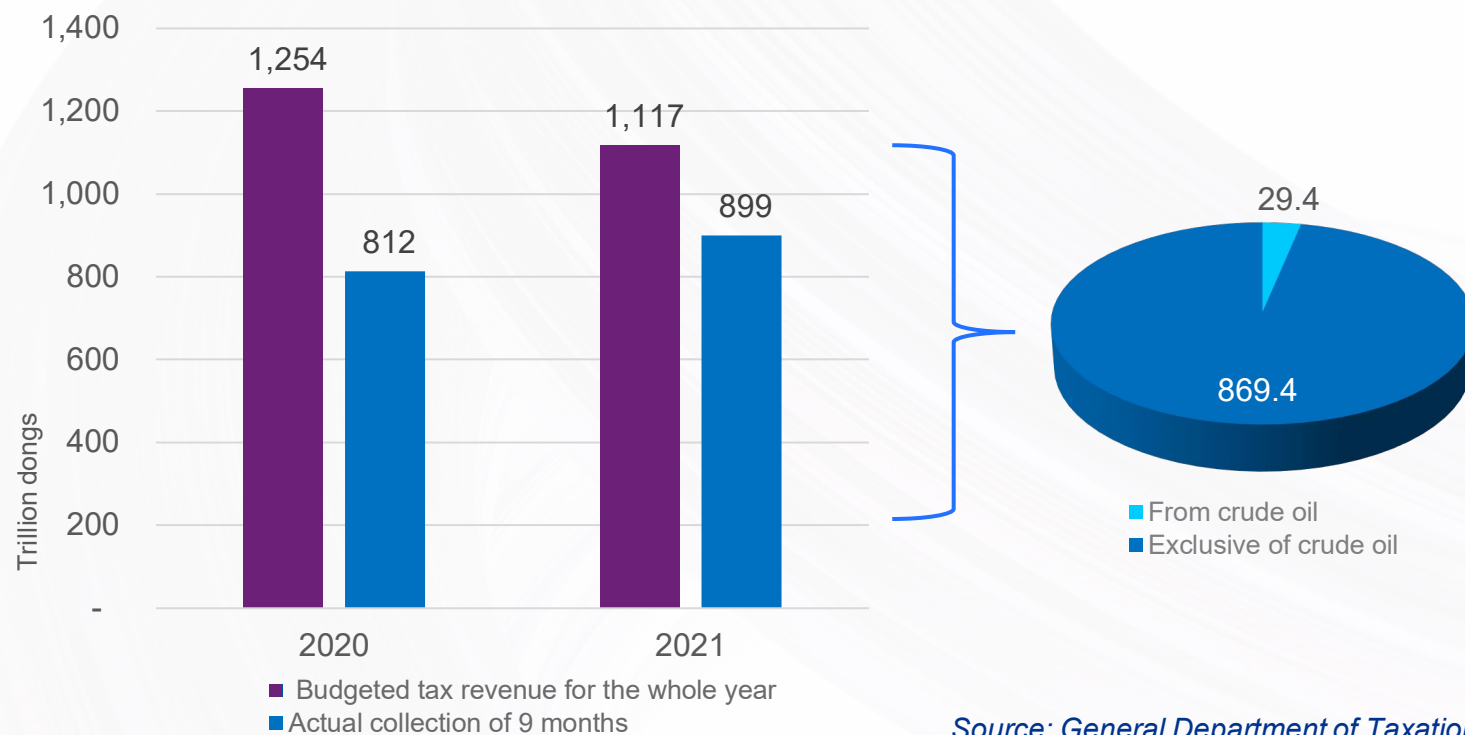


# State Budget collection

## State budget revenue and expenditure



## Collection from domestic



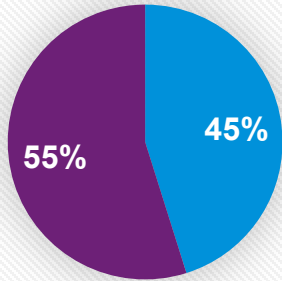
Source: General Department of Taxation





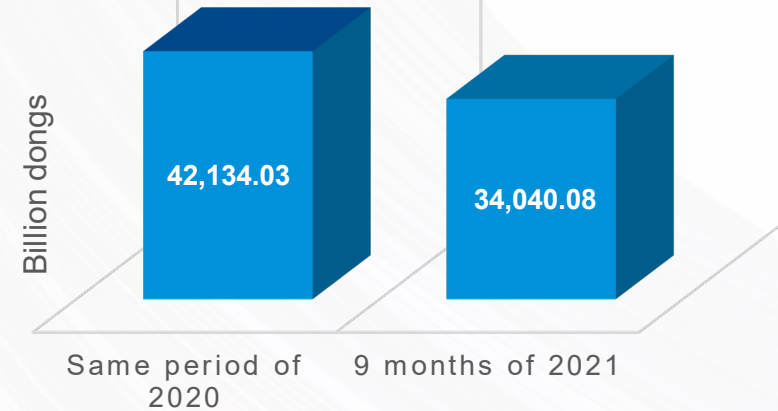
# Tax Inspection/ Tax Audit Trend

**Tax inspections/ audits 2021**



- 46,752 audits conducted
- 56,817 audits not yet conducted per tax audit plan

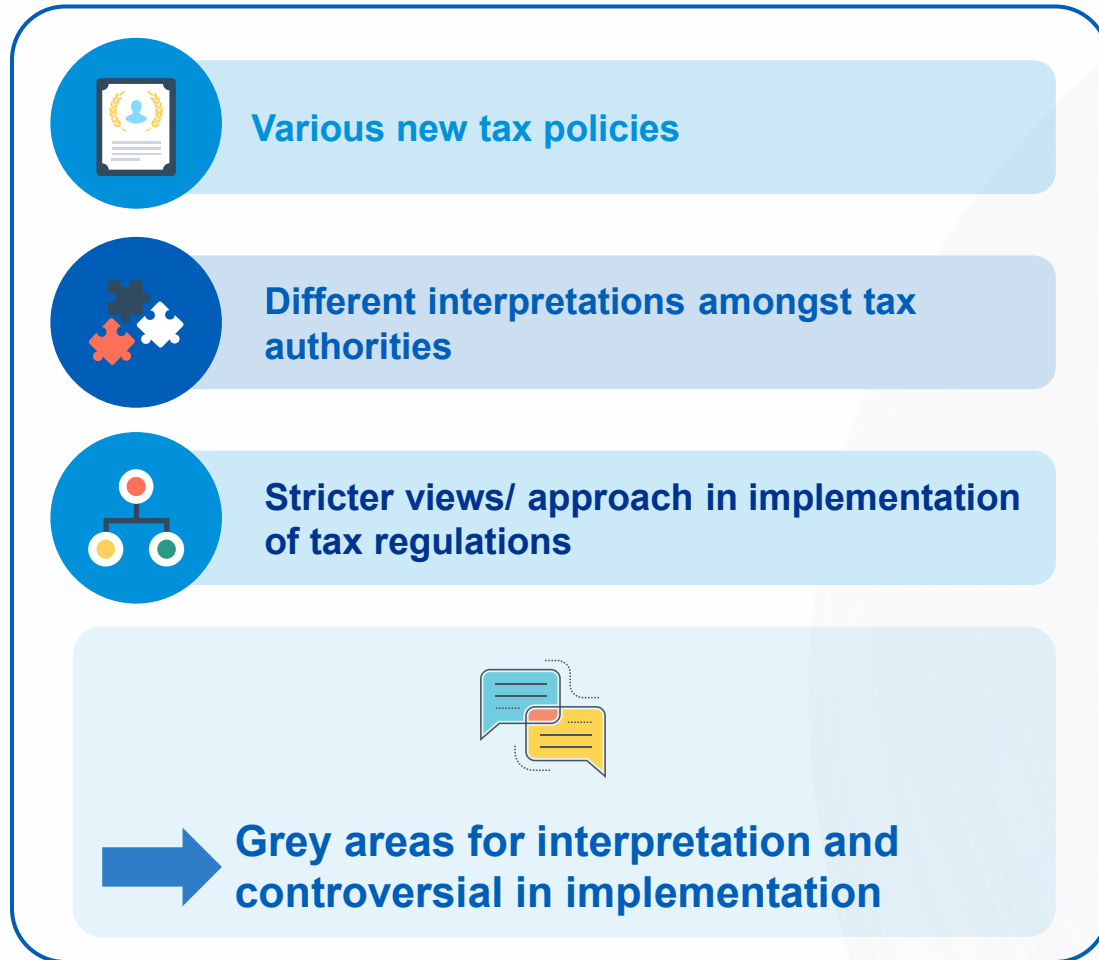
**Tax collection from tax audit**



- **More aggressive tax audit conclusion**
- **Re-boost tax audit program by post pandemic**
- **New tax audit procedures**
- **Combine and expand tax audit scope**
- **Co-operate with the competent authorities**



# Tax issues and action towards controversy



# Tax Authority action on VAT Refund



## GDT's new specialized team for VAT refund control



### Measures to tighten VAT refund:

- Audit first refund later - VAT refund claw-back cases in the last refund
- Aggressive approach and stricter requirements for VAT refund applications
- Co-ordinate with domestic & overseas customs authorities / commercial banks

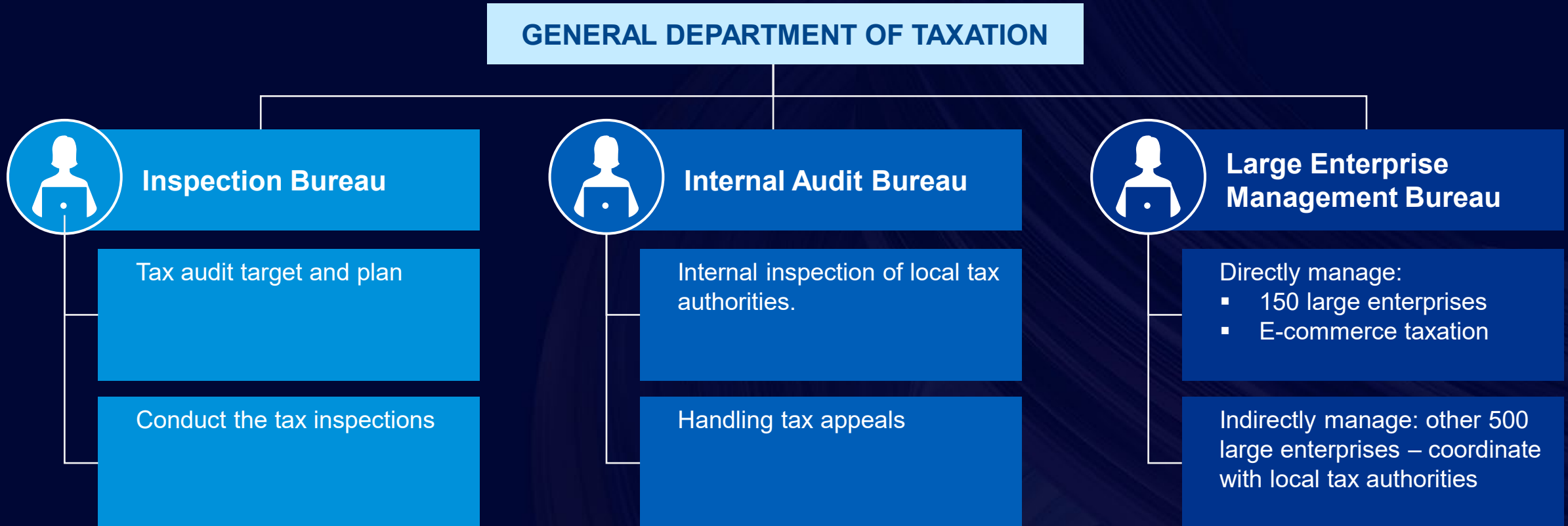
(Source: OL2928/TCT-TTKT, OL9877/BTC-VP, OL428/TCT-TTKT, OL429/TCT-TTKT, Circular 31/2021/TT-BTC)



## Combine VAT refund audit with other tax audits



# Strengthen tax administration at central level



Source: Decision 1966, 1968, 1969/QĐ-BTC dated 08 October 2021







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# Practical Tax Issues



**Mr. Ta Hong Thai**

Partner  
Corporate Tax  
KPMG in Vietnam

# Practical and controversial issues

1

**Advertising and  
Promotion (A&P)  
expenses**

2

**Related party  
expenses**

3

**Expenses  
incompliance with  
other regulations**

4

**COVID related  
expenses**

5

**Provisional CIT  
payment**

6

**Overseas support**

7

**Accruals**

8

**VAT Refund**

9

**Project transfer**



# A&P expenses



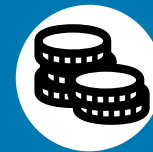
## A&P incurred with indirect customers

- Promotion, Support for sub-dealers
- Expenses in relation to assets, tools kept at sub-dealers



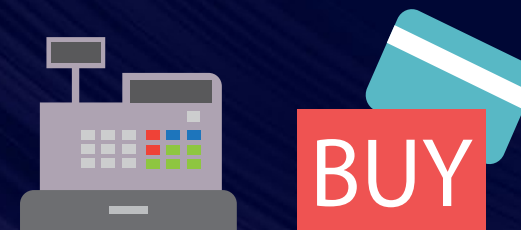
## Not in line with registered activities

- A&P expenses of manufacturing companies, which do not have trading activities – not matching with revenue



## Not in line with regulations on commerce

- Discount > 50% for purchase of large quantity



**Not deductible**



# Related party expenses

## Common challenges



Not actually incurred or services without substance



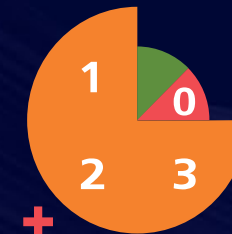
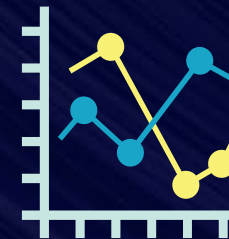
Do not bring benefits to the Company



Duplicated services



Lack of a consistent fee calculation basis

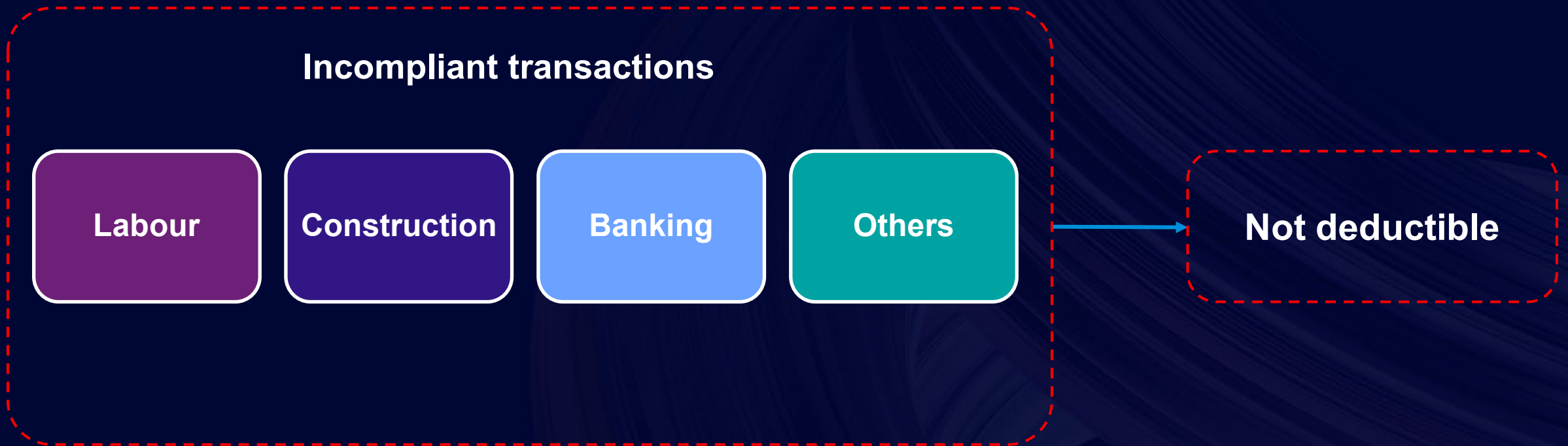


**KPMG's observation and OL  
1524/TCT-DNL  
dated 17 May 2021 of the GDT**





# Expenses in compliance with other regulations



# COVID related expenses (1/2)

## Covid prevention expenses



### Deductible but subject to cap:

- ✓ Covid testing, Covid vaccination, Quarantine
- ✓ Expenses for employees staying at the factory e.g. food, allowances.

*(OL 31577/CTHN-TTHT dated 13 August 2021 of Hanoi TD, OL 1883/CTBNI-TTHT dated 29 June 2021 of Bac Ninh TD)*



### Controversial issues:

- Subject to cap? Mentioned in labor contract?
- Other expenses for employees staying at the factory:
  - Tents, blankets, TVs
  - Cooking, soft drinks, beverage, etc.
- Support for employees during distancing period out of normal working place:
  - Internet, mental and physical health allowance
  - Personal kit-test and medical cost at home, etc.



# COVID related expenses (2/2)

## Other Covid related issues



- Inconsistent guidance regarding depreciation expenses

*(OL 12425/BTC-TCT dated 9 October 2020 of the MOF and OL1565/CT-TTHT dated 31 March 2021 of Binh Phuoc Tax Department)*



- Other extraordinary costs: deductible or not?
- ✓ Provisions for goods, logistics, personnel and contract performance
- ✓ Adjustment of COGS, materials, labor costs and production overheads
- ✓ Cost of transferring assets and production to other units in the group, etc.



# Provisional CIT payment

**From FY21:  
75%  
by the 3<sup>rd</sup> quarter**

- Decree 126/2020/ND-CP;
- OL 37175 of Hanoi Tax Department dated 30 Sep 2021, OL 4396 of Bac Giang Tax Department dated 17 Sep 2021





# Overseas support



# Accruals

**Treated as  
Deductible for matching concept?**

**Non-deductible as having no  
invoice or payment evidence?**



# VAT Refund (1/3)



## Incompliance with regulations

- ✓ Investment regulations
- ✓ Construction regulations
- ✓ Etc.



## Incompliance with payment requirements:

- X Over-due payment, offset payment or deferred payment not regulated in contract
- X Lacking or inconsistent bank account information on bank statements

*(Point a, Clause 3, Article 16, Circular 219/2013/TT-BTC; OL 5018/TCT-KK dated 13 December 2018 of the GDT)*



Input VAT is not creditable/refundable



# VAT Refund (2/3)



**Export revenue  
reduction lacking  
revised customs  
declaration**



**Input VAT is not  
creditable/refundable**





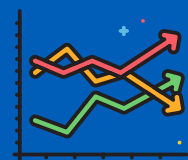
# VAT Refund (3/3)



## VAT refund for investment project:

- ✓ Must be declared when the investment period completes
- ✓ Restriction on timeline for revision

*(Point 4, Article 7, Decree 126/2020/ND-CP; OL 944/TCT-CS dated 1 April 2021 of the GDT)*



**Investment period eligible for refund:** up to the month that the company starts to have sale revenue

*(OL1085/TCT-KK dated 29 March 2019 of the GDT)*

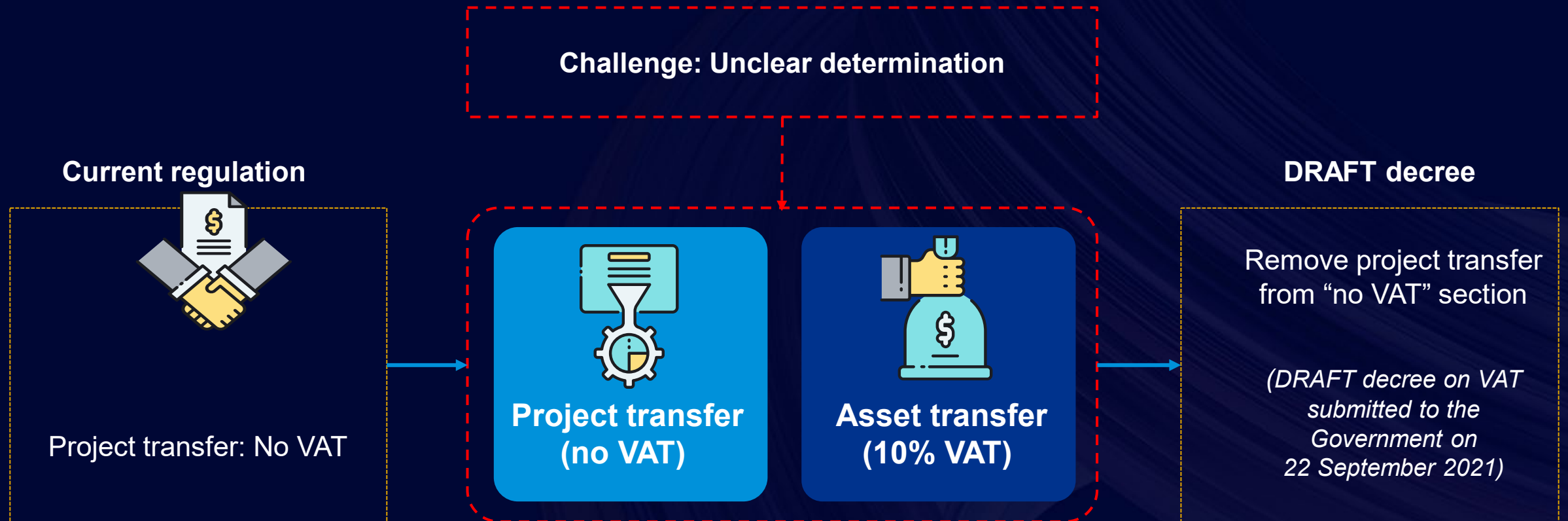


**Incomplete or inconsistent VAT refund dossier:** Subject to pre-VAT refund inspection

*(Point b2, Article 34, Circular 80/2021/TT-BTC)*



# Project transfer





2021 Tax and Legal Institute

# Transfer Pricing



**Ms Tran Thi Thuy Ha**

Partner  
Transfer Pricing  
KPMG in Vietnam

# Transfer Pricing

**1**

**Transfer Pricing Compliance Requirements**

**2**

**Transfer Pricing Audit Trends**

**3**

**Transfer Pricing implications of the Covid-19 pandemic**

**4**

**Advanced Pricing Agreement (“APA”) update**





# Transfer Pricing

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# Transfer pricing compliance requirements under Decree 132

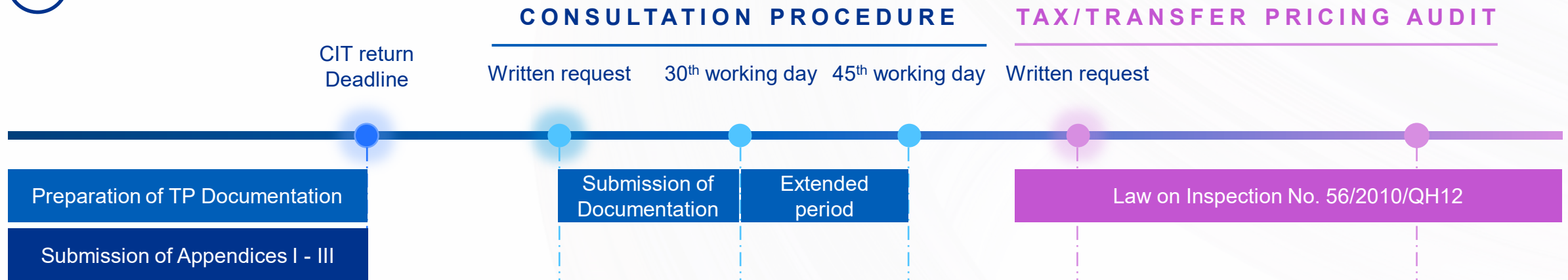
## Annual mandatory disclosure

- **Appendix I** – Disclosure of related party transactions
- **Appendix II** – Checklist of information in Local File
- **Appendix III** – Checklist of information in Master File
- **Appendix IV** – Country by Country report (CbCR) – *only applicable to certain Vietnamese ultimate parent company*

## TP documentation package

- A **Master File** - containing standardized information relevant for all Multinational Enterprises (MNE) group members
- A **Local File** - referring specifically to related party transactions of the local taxpayer
- A **CbCR** where applicable.

## Regulatory deadlines



# Transfer Pricing

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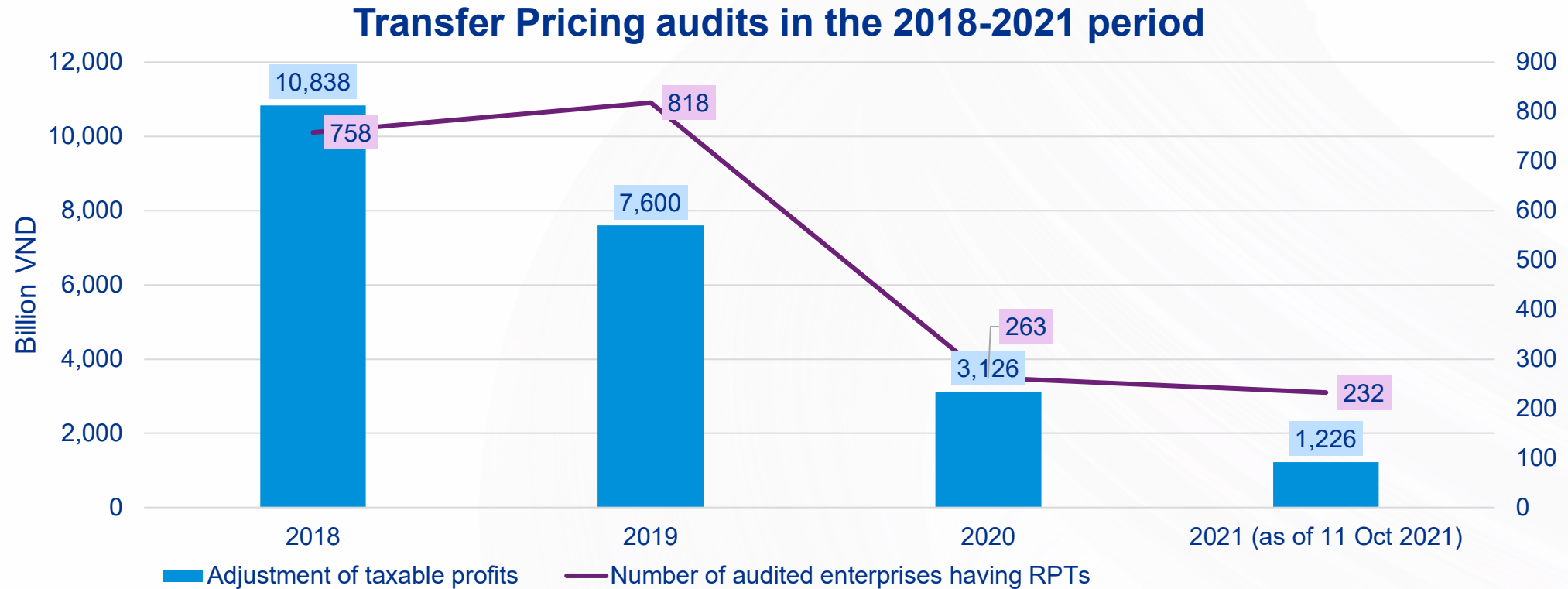
**4**

**Advanced Pricing Agreement (“APA”) update**



# Transfer pricing audit - Overview

(Source: General Department of Taxation and public information)

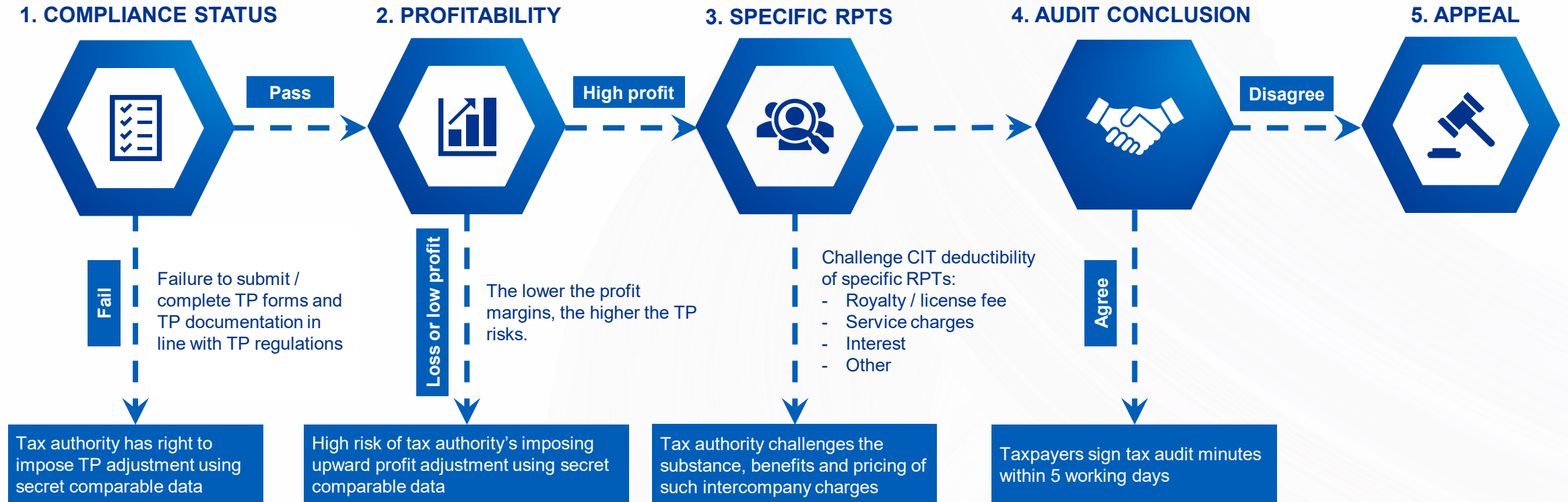


*Given the fiscal challenges faced by the Government, we expect significant increase in transfer pricing audits in the coming years.*





# Transfer pricing audit – Common approach of tax authorities



## Key takeaways:

*Managing the entire TP audit process – including formulating audit strategy, information submission and negotiations – is critical to reducing tax risk / exposure.*



# Transfer Pricing

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# Transfer pricing implications of the COVID-19 pandemic

## Operational Transfer Pricing

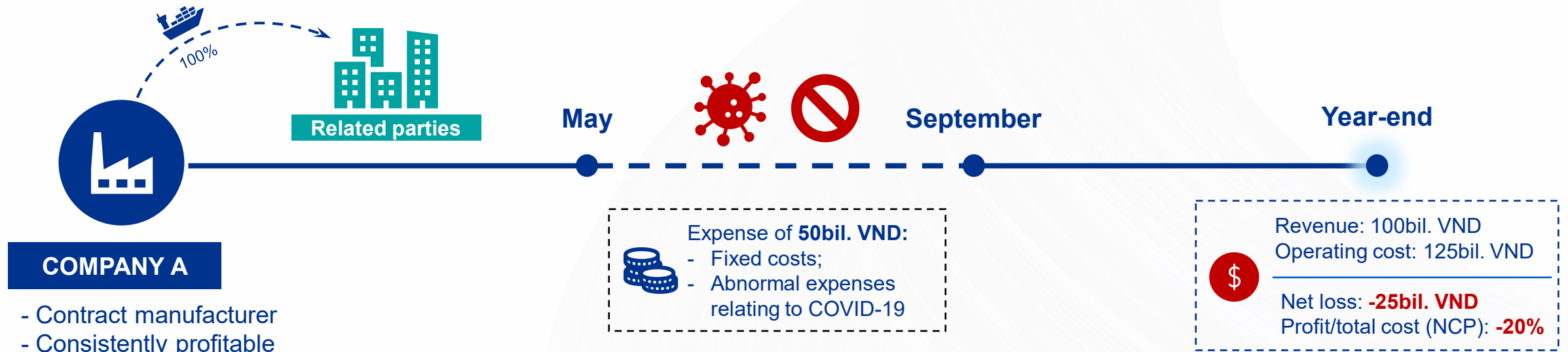
- 1 Revisit TP policy
- 2 Reallocate profit / loss and costs
- 3 Consider voluntary TP adjustment
- 4 Others

## Transfer Pricing documentation

- 1 Document the impact of COVID-19 on overall business and operations
- 2 Consider economic adjustments to quantify COVID 19 impact on financials
- 3 Additional benchmarking solution



# Case study – Impact of Covid-19



## Approach for TP documentation of Company A:

- ✓ Detailed financial analysis in the Local File to explain the loss-making position in FY2021
- ✓ Theoretical economic adjustments on operating results to quantify the impact of abnormal expenses
- ✓ Consideration of final set of comparable companies



# Transfer Pricing

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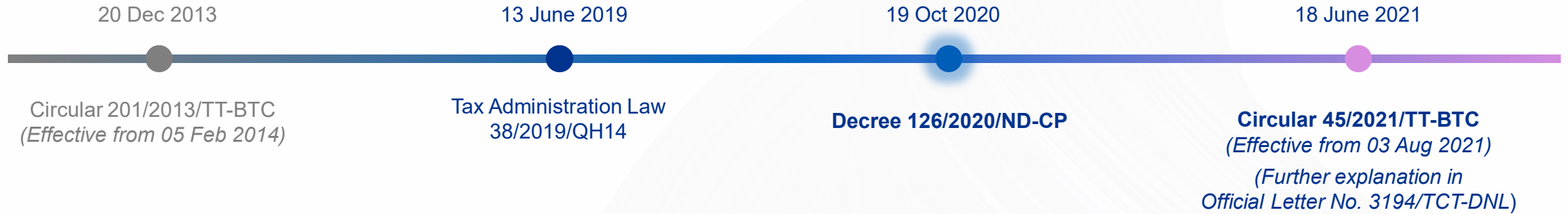
**4**

**Advanced Pricing Agreement (“APA”) update**





# APA update



## Covered transactions

- Have occurred and will continue to occur during the APA period.
- Not be subject to / under tax dispute or appeal.



## Covered period

- Maximum of 3 years.



## Effective date

- Starts when the APA is signed between the respective Competent Authorities (CA).
- For bilateral APAs, if both CAs agree on a different effective date, MOF of Vietnam can propose to the Government for approval.



## Application process

- Pre-filing consultation step is no longer mandatory.



## Review of APA application

- No specific timeline/ deadline for tax authority to review the APA application.
- GDT can apply tax administrative measures to review / verify the APA application.



## Revision/termination of unilateral APA

- Taxpayers can request the GDT to amend or terminate the Unilateral APA in case of being exposed to double taxation.





2021 Tax and Legal Institute

# Trade & Customs Updates



**Mr Nhan Huynh**

Partner  
Head of Integrated International Tax  
KPMG in Vietnam

# Trade & Customs Updates

**1**

**FTA Updates**

**2**

**New Customs Regulations on On-the-Spot Export & Import**

**3**

**EPE and EPE Conversion Considerations**

**4**

**Common Customs Challenges**



# Free Trade Agreements Updates

No.	FTA	Signed date	Effective date	C/O	Member states
FTAs in effect					
1	ACFTA	29 Nov 2004	Jul 2005	Form E	ASEAN, China
2	AKFTA	24 Aug 2006	Jun 2007	Form AK	ASEAN, South Korea
3	AJCEP	1 April 2008	1 Dec 2008	Form AJ	ASEAN, Japan
4	VJEPA	25 Dec 2008	1 Oct 2009	Form VJ	Vietnam, Japan
5	AANZFTA	27 Feb 2009	1 Jan 2010	Form AANZ	ASEAN, Australia, New Zealand
6	AIFTA	24 Oct 2009	1 Jan 2010	Form AI	ASEAN, India
7	ATIGA	26 Feb 2009	17 May 2010	Form D	ASEAN
8	VCFTA	11 Nov 2011	1 Jan 2014	Form VC	Vietnam, Chile
9	VKFTA	5 May 2015	20 Dec 2015	Form VK	Vietnam, South Korea
10	VN-EAEU FTA	29 May 2015	5 Oct 2016	Form EAV	Vietnam, Russia, Belarus, Armenia, Kazakhstan, Kyrgyzstan.
11	CPTPP	8 Mar 2018	14 Jan 2019	Form CPTPP	Vietnam, Canada, Mexico, Peru, Chile, New Zealand, Australia, Japan, Singapore, Brunei, Malaysia
12	AHKFTA	12 Nov 2017	11 Jun 2019	Form AHK	ASEAN, Hongkong (China)
13	EVFTA	30 Jun 2019	1 Aug 2020	Form EUR.1	Vietnam, EU (27 members)
14	UKVFTA	29 Dec 2020	1 May 2021	Form EUR.1	Vietnam, UK, Northern Ireland
Signed FTAs, not yet in effective					
15	RCEP	15/11/2020	1 January 2022	Pending further guidance	ASEAN, China, Korea, Japan, Australia, New Zealand
FTAs under negotiation					
16	VN – EFTA FTA	Negotiations commenced in May 2012		N/A	Vietnam, European Free Trade Association (Switzerland, Norway, Iceland, Liechtenstein)
17	VN– Israel FTA	Negotiations commenced in December 2015		N/A	Vietnam, Israel





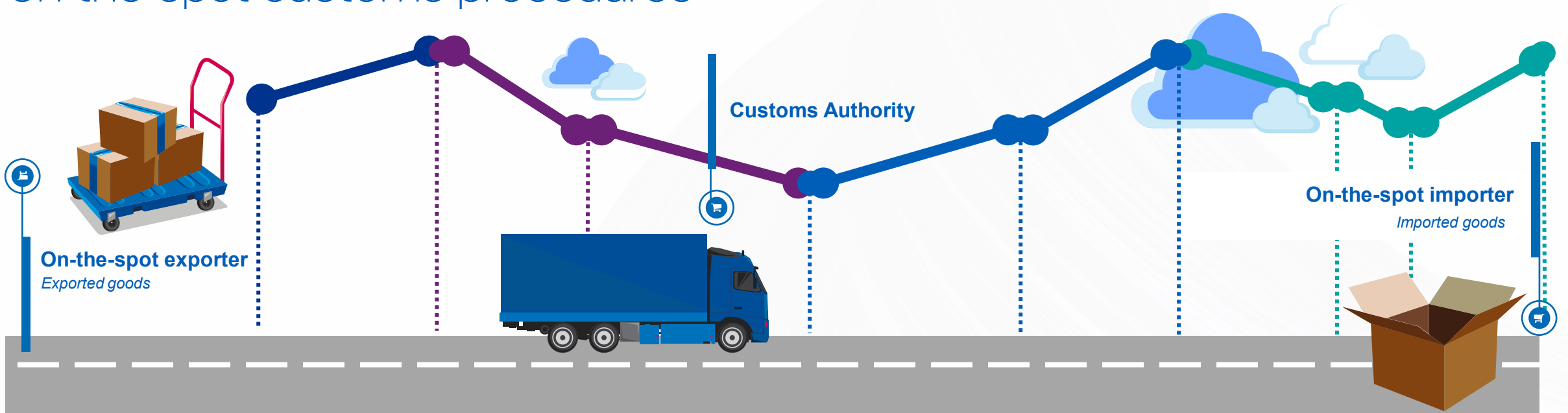
# Free Trade Agreements Updates

No.	Agreement	Tariff elimination	
1	CPTPP	<ul style="list-style-type: none"> <li><b>Goods imported into Vietnam:</b> 65.8% of tariff lines (immediately) → 86.5% of tariff lines (after 4 years) → 97.8% of tariff lines (after 11 years) → 100% (within 16 years or apply tariff quotas)</li> <li><b>Goods imported into other CPTPP countries:</b> 78-95% of tariff lines (immediately) → 97-100% of tariff lines (in more than 10 years or apply tariff quotas)</li> </ul>	
2	EVFTA	<ul style="list-style-type: none"> <li><b>Goods imported into Vietnam:</b> 48.5% of tariff lines (immediately) → 98.3% of tariff lines (within 10 years) → 100% (after 10 years or applied tariff quotas)</li> <li><b>Goods imported into EU:</b> 85.6% of tariff lines (immediately) → 99.2% of tariff lines (within 7 years) → 100% (after 7 years or apply tariff quotas)</li> <li>EVFTA will replace the General Systems of Preferences (GSP) within 7 years after entry into force (01 August 2020)</li> </ul>	
3	UKVFTA	<ul style="list-style-type: none"> <li><b>Goods imported into Vietnam:</b> 48.5% of tariff lines (immediately) → 91.8% of tariff lines (by 1 Jan 2027) → 98.3% of tariff lines (by 1 Jan 2029)</li> <li><b>Goods imported into UK:</b> 85.6% of tariff lines (immediately) → 99.2% of tariff lines (by 1 Jan 2027)</li> </ul>	
4	RCEP	<b>Goods imported into Vietnam:</b> <ul style="list-style-type: none"> <li>64% of tariff lines (immediately)</li> </ul> <b>After 15 – 20 years:</b> <ul style="list-style-type: none"> <li>90.3% of tariff lines for ASEAN countries</li> <li>89.6% of tariff lines for Australia and New Zealand</li> <li>86.7% of tariff lines for Korea and Japan</li> <li>85.6% of the tariff lines for China</li> </ul>	<b>Goods imported into other RCEP member countries:</b> <ul style="list-style-type: none"> <li>64% of tariff lines (immediately)</li> </ul> <b>After 15 – 20 years:</b> <ul style="list-style-type: none"> <li>Australia: 92% of tariff lines</li> <li>New Zealand: 91.4% of tariff lines</li> <li>Japan: 90.4% of tariff lines</li> <li>Korea: 90.7% of tariff lines</li> <li>China: 90.7% of tariff lines</li> <li>ASEAN: average 90% of tariff lines</li> </ul>





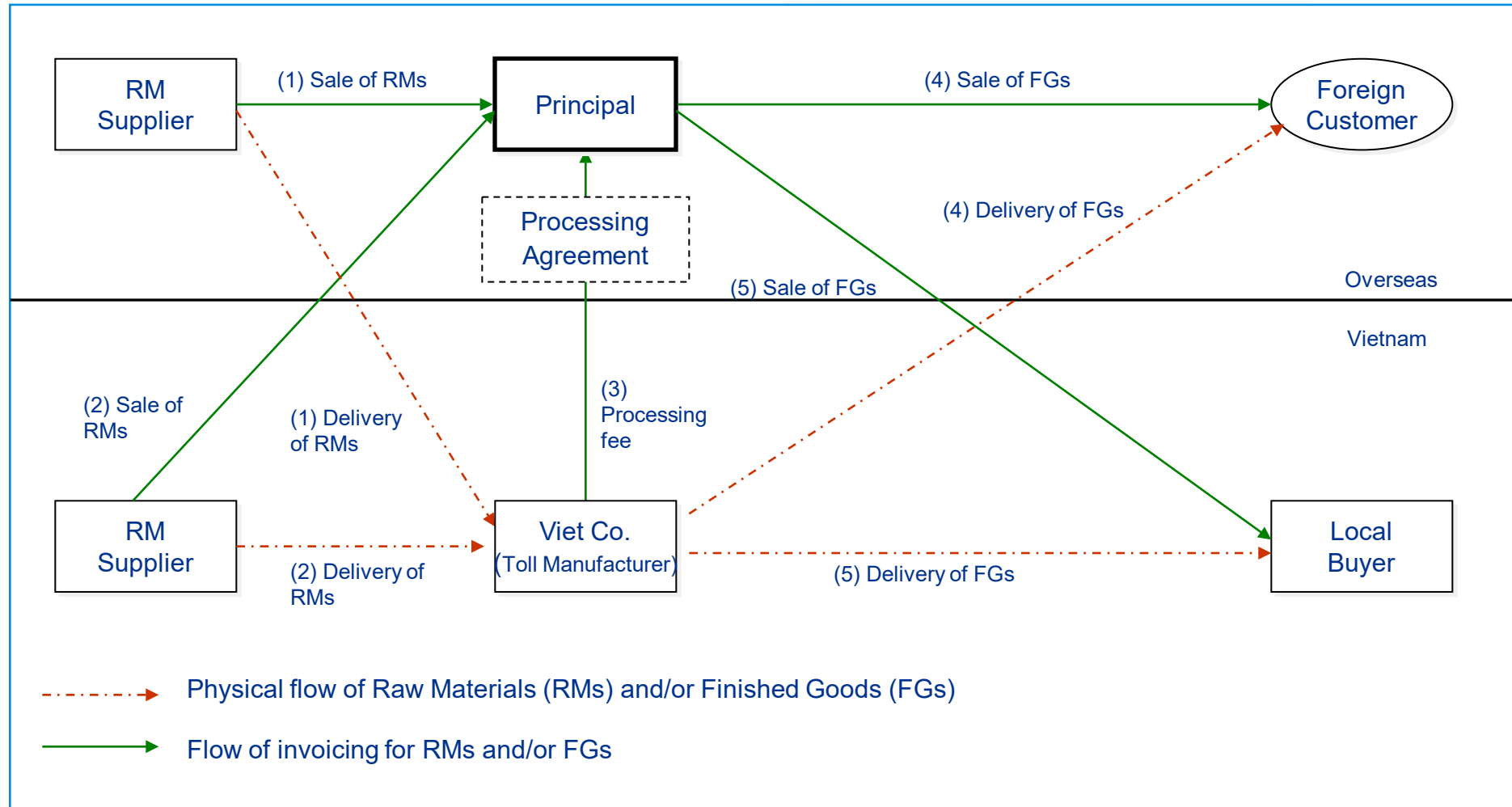
# On-the-spot customs procedures



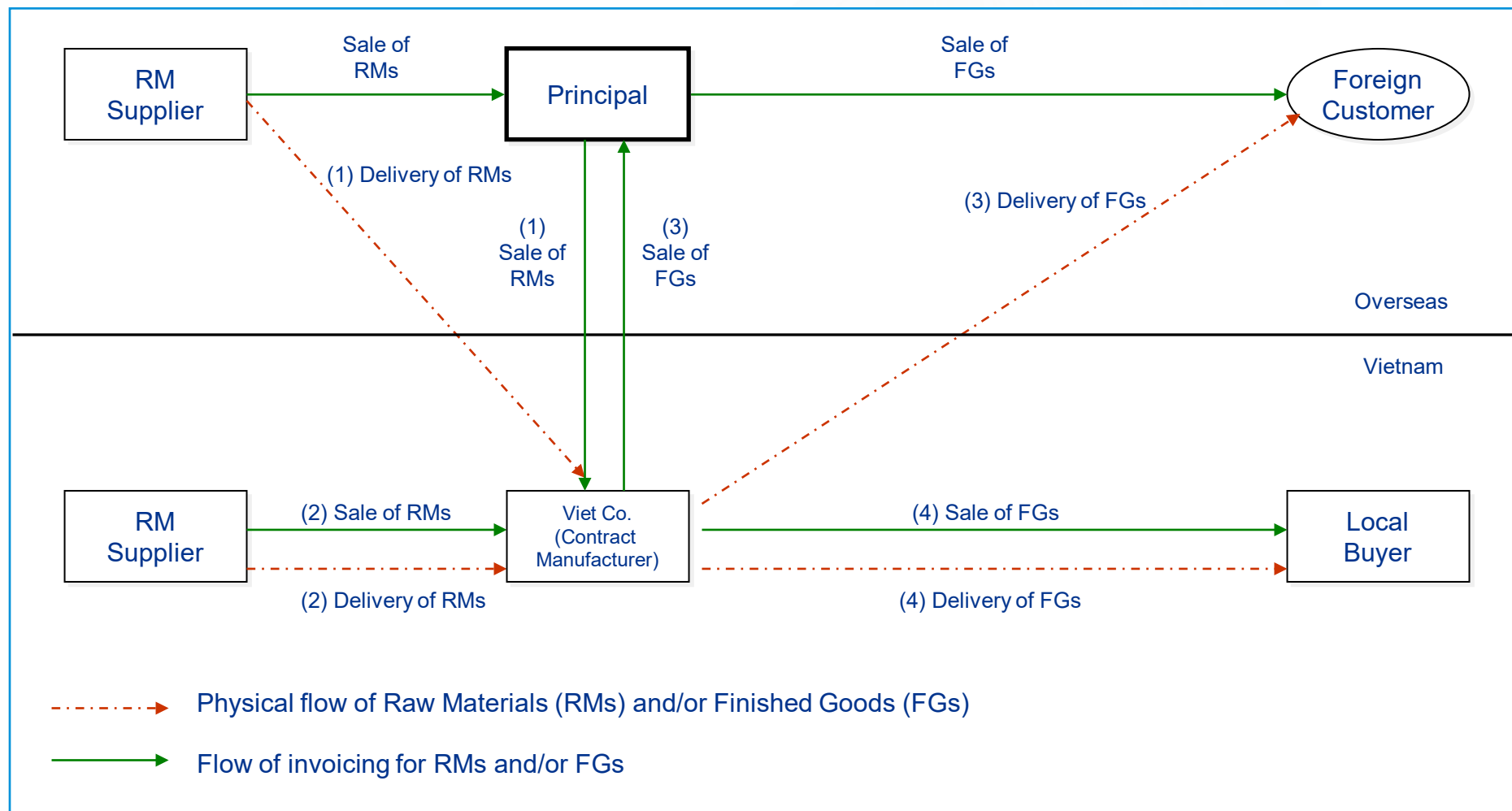
EXPORTERS		IMPORTERS	
<ul style="list-style-type: none"> <li>Carry out on-the-spot export CD and provide information of corresponding on-the-spot import CD within 15 days</li> <li>Fail to comply with the requirement:                             <ul style="list-style-type: none"> <li>✓ pay import duty and import VAT of relevant input material; and</li> <li>✓ seek for refund upon provision of corresponding on-the-spot import CD</li> </ul> </li> </ul>		Processing arrangement	<ul style="list-style-type: none"> <li>Carry out on-the-spot import CD</li> <li>Enjoy duty exemption</li> </ul>
		Contract manufacturing arrangement	<ul style="list-style-type: none"> <li>Carry out on-the-spot import CD</li> <li>Pay import VAT and import duty</li> <li>Seek for refund when finished products are exported</li> </ul>



# Toll Manufacturing Model



# Contract Manufacturing Model



# EPE Overview



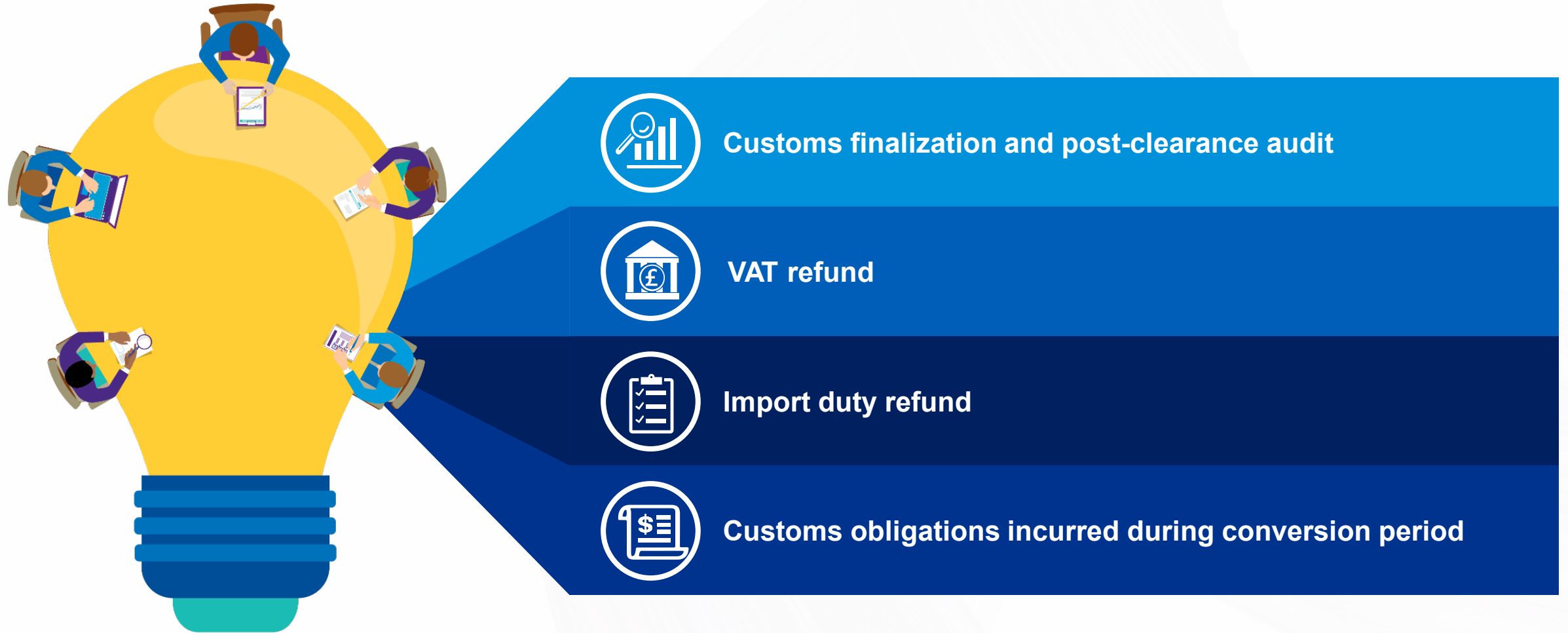
## EPE vs Non-EPE

	Non-EPE	EPE
<b>SIMILARITIES</b>	<ul style="list-style-type: none"><li>• No import duty and import VAT payable for material imported for manufacturing/processing for export</li><li>• Year-end customs finalization is required</li></ul>	
<b>KEY DIFFERENCES</b>		
<b># Transactions with local partners</b>	<ul style="list-style-type: none"><li>• Considered as normal domestic transactions, subject to VAT</li></ul>	<ul style="list-style-type: none"><li>• Considered as import and export transactions, subject to customs procedures</li></ul>
✓ Sales of finished goods to local customers	<ul style="list-style-type: none"><li>• Subject to VAT (normally at 10%)</li></ul>	<ul style="list-style-type: none"><li>• Not subject to VAT and export duty</li><li>• Import VAT and import duty payable by local customers</li></ul>
✓ Material purchased from local suppliers	<ul style="list-style-type: none"><li>• Subject to VAT (normally at 10%)</li></ul>	<ul style="list-style-type: none"><li>• Not subject to import VAT and import duty</li></ul>
✓ Imported goods other than material (e.g., tools, supplies)	<ul style="list-style-type: none"><li>• Subject to import VAT and import duty</li></ul>	<ul style="list-style-type: none"><li>• Not subject to import VAT and import duty</li></ul>
✓ Duty exemption for M&Es imported to form fixed assets	<ul style="list-style-type: none"><li>• Only for encouraged projects and limited within the list of M&amp;Es registered at investment stage</li></ul>	<ul style="list-style-type: none"><li>• Not subject to import VAT and import duty</li></ul>
✓ On-the-spot imported materials	<ul style="list-style-type: none"><li>• Only export processing is exempted from import VAT and import duty</li></ul>	<ul style="list-style-type: none"><li>• Not subject to import VAT and import duty</li></ul>
<b># Services provided by local services providers</b>	<ul style="list-style-type: none"><li>• Subject to VAT (normally at 10%)</li><li>• Could be creditable</li></ul>	<ul style="list-style-type: none"><li>• Mostly subject to 0% VAT</li><li>• Some (e.g., transportation) will subject to 10% VAT and could not be creditable</li></ul>
<b># VAT declaration requirements</b>	<ul style="list-style-type: none"><li>• Yes (monthly/ quarterly)</li></ul>	<ul style="list-style-type: none"><li>• No</li></ul>





# EPE conversion considerations



# Application Procedures

## Pre-step

Application for amendment of the Investment Registration Certificate ("IRC")



## STEP 1

Clear all pending import / export taxes and penalty liabilities

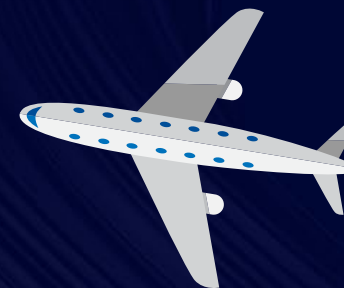
## STEP 2

Customs authority to check on the eligibility for customs inspection and supervision



## STEP 3

Relevant Economic Zone Authority to issue the Amended IRC to the Company



# Common Challenges - Customs valuation

## Application of transaction value method

- Existence and declaration of “special relationship”? → customs valuation consultation/ PCA
- Does “special relationship” affect transaction value? Sample invoice showing similar price from unrelated supplier and/or to unrelated customer
- Change in import price due to change in importer’s FAR profiles → supporting TP documentation

## Incremental adjustments to customs value

### Possible additions:

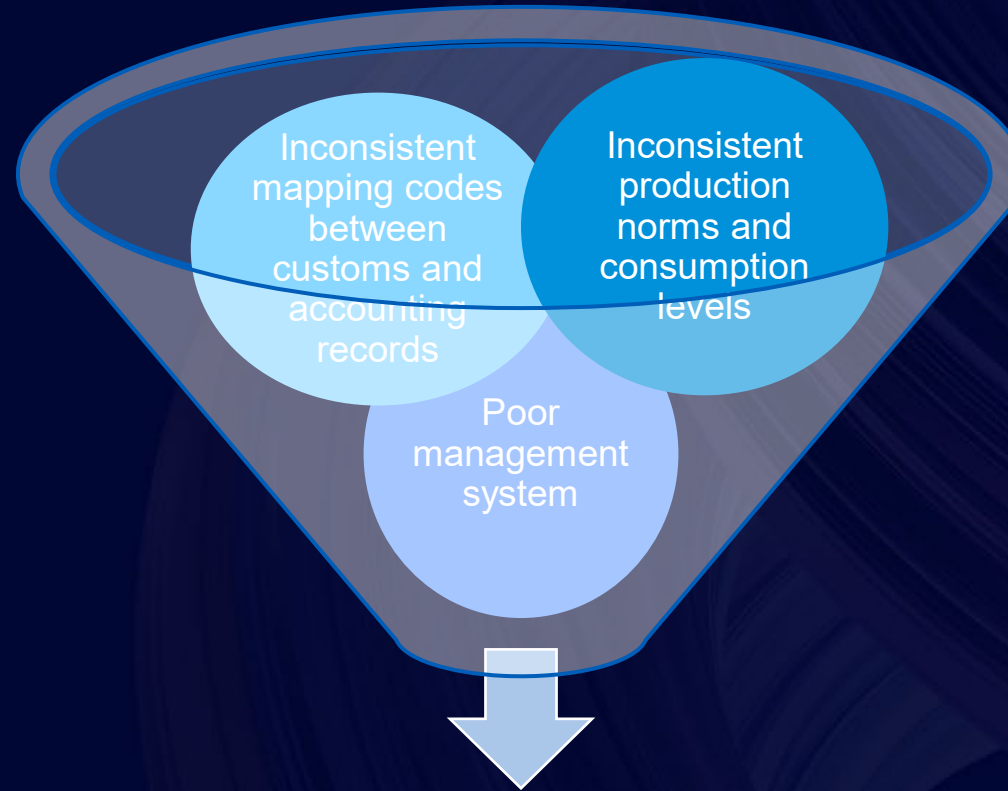
- Royalties, related to the imported goods, that the buyer is required to pay, directly or indirectly, as a condition of the sales
- Selling commissions and proceeds
- Others

### Other considerations:

- Administrative burdens relating to dutiable royalties
- Bundling and unbundling dutiable and non-dutiable costs → may lead to change in importer’s FAR profiles



# Common Challenges - Management of material imported for production for export



**Discrepancies between customs and accounting records  
→ import duty & import VAT implications**



# Common Challenges - TP adjustments



## Downward Adjustment

- Not allowed, not tax deductible
- Lack of regulations/ guidance on required customs procedures
- Amending relevant past import declarations could be costly and not practical



## Upward Adjustment

- Generally acceptable by the local tax authorities
- Lack of regulations/ guidance on required customs procedures
- No customs duty refund opportunity





# Vietnam's taxation of e-commerce & digital-based business activities



**Mr Nhan Huynh**

Partner  
Head of Integrated International Tax  
KPMG in Vietnam

# In-scope taxpayers & In-scope activities

- Overseas suppliers who do not have a permanent establishment in Vietnam but conducting e-commerce and/or digital-based businesses and having income arising from Vietnam (“**Overseas Suppliers**”)
- Effective from 1 January 2022



## E-commerce

The conduct of part or whole process of commercial activities by electronic means connected to the Internet, mobile telecommunication network or other open networks



## Digital-based business

Business activities of business entities through an intermediary digital system to connect with customers, all connection activities take place in a digital environment



# Tax registration, declaration and payment

Overseas Suppliers who wish to register to self-declare and pay applicable taxes in Vietnam

How to make tax registration, declaration and payment?

- Via GDT's e-portal administered by GDT which is soon to be available

When to file tax declaration and payment?

- On a quarterly basis



# Tax registration, declaration and payment (cont.)

Overseas Suppliers who choose not register to self-declare and pay applicable taxes in Vietnam

## B2B transactions

- Vietnamese organizational customers to withhold and declare applicable taxes

## B2C transactions

- Commercial banks & payment intermediaries to withhold and declare taxes
- Tax filings on a monthly basis
- Commercial banks & payment intermediaries to report the amounts from which they cannot withhold taxes For card
- Withholding and reporting obligation starts when receiving written notice from GDT



# Tax computation & Tax Treaty considerations

## Applicable tax computation

- Comprising of two (02) components, Corporate Income Tax and Value Added Tax
- Applicable deemed tax rates depending on activities undertaken & nature of fees charged
- Highest deemed tax rates to apply, if separate in-scope activities cannot be determined

## Tax Treaty considerations

- General treaty claim procedures provided
- Lack of specific treaty claim procedures, especially for non-registered Overseas Suppliers with respect to income derived from B2C transactions







2021 Tax and Legal Institute

# Immigration



**Ms Andrea Godfrey**

Partner  
Head of Global Mobility Services  
KPMG in Vietnam

# Immigration

**1**

**Requirements For Entry And Quarantine In Vietnam**

**2**

**International Flight Reopening Plan**

**3**

**Notable Points On Work Permit Application For Foreign Workers In Vietnam**



# Immigration

**1**

**Requirements For Entry And Quarantine In Vietnam**

**2**

**International Flight Reopening Plan**

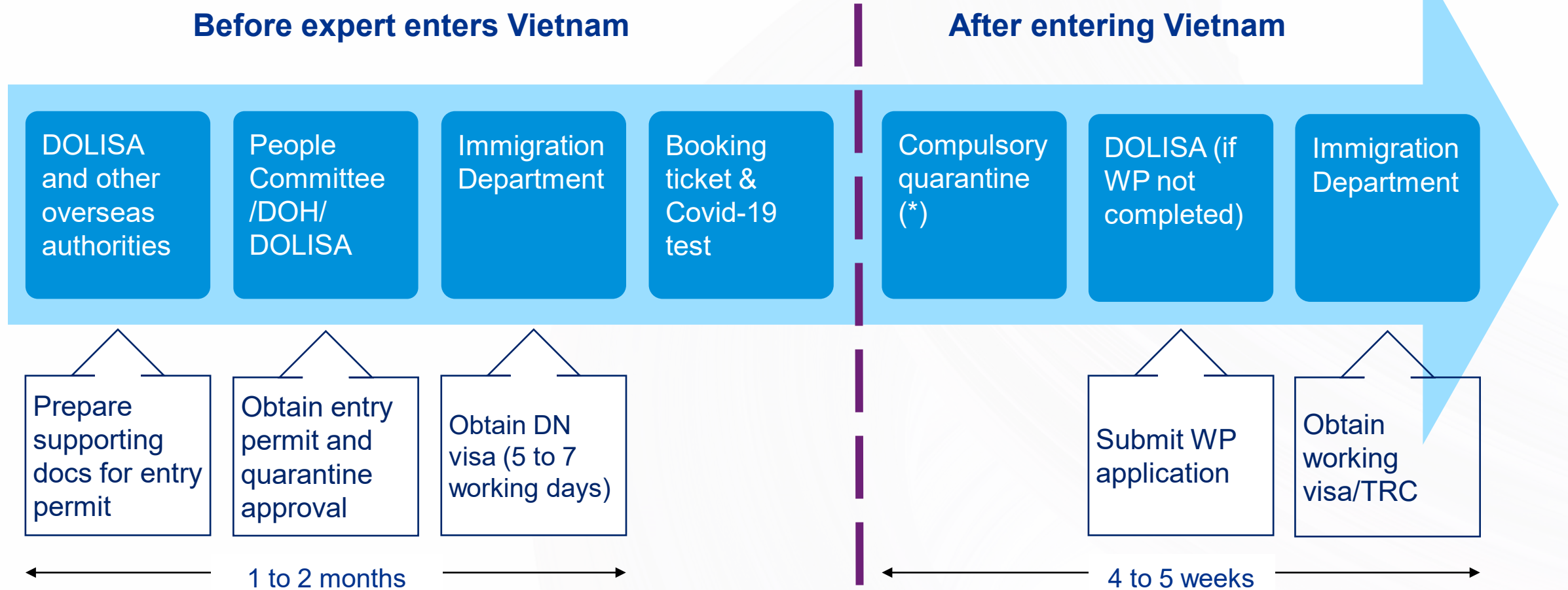
**3**

**Notable Points On Work Permit Application For Foreign Workers In Vietnam**



## 1. Requirements For Entry And Quarantine In Vietnam

# Entry permit requirements



*The above procedures re for application in Hanoi and might be different in other provinces*



# Quarantine requirements for passengers who are fully vaccinated

Compulsory quarantine for 7 days upon arrival and 7 days medical surveillance if:

- Negative Covid -19 test certificate using RT-PCR method within 72 hours before travelling AND
- (i) Certificate of Covid-19 vaccinated completion where the latest dose is received within period of 14 days to no more than 12 months from the travel date. ; OR
- (ii) Positive Covid-19 test certificate using RT-PCR method, issued within 6 months from travel date and Certificate or relevant documents proving that the traveler is recovered from Covid-19

Travelers will be tested for Covid-19 on day 1 and day 7 from the arrival date;

Ministry of Foreign Affairs to provide further guidance on recognition of relevant certificates

Provincial People Committees to provide further guidance to implement the above Official letter

*Official letter 6288/BYT-MT dated 4 August 2021 of Ministry of Health*





# Regulations on vaccination certificates

If the vaccine certificate and the certification of recovery from Covid-19 has been officially introduced to MOFA => translate into Vietnamese and notarize in Vietnam

If the vaccine certificate and certification of recovery from Covid-19 has NOT been officially introduced to MOFA OR the certificate does not follow the recognized template => legalize the certificate overseas then translate into Vietnamese and notarize in Vietnam

Up to 25 October 2021 Vietnam has recognized vaccine certificate and certification of recovery from Covid-19 for 72 countries and territories.

When the vaccine certificate and the certification of recovery is not the same as the one introduced => must be legalized for use in Vietnam

*OL2974/LS-PL dated 06/08/2021, OL3100/LS-PL dated 13/08/2021;*

*OL3185/BNG-LS dated 18/08/2021 The Ministry of Foreign Affairs*

*The list of countries and territories that have introduced vaccine certificates or proof of COVID-19 recovery will be frequently updated at [Lanhsuvietnam.gov.vn](http://Lanhsuvietnam.gov.vn)*



# Current issues faced during entry permit procedures

### Procedures

- Different provinces/cities have different procedures
- Regulations relating to entry approvals change frequently without advance notice
- Fresh applications with full dossiers are required for each time of entry
- Approval from two provinces if location of sponsor is different from arrival/quarantine province

### Required documents

- Degree/diploma/ COE must be notarized and legalized. This process might take many weeks
- In some provinces, hotels for quarantine must be fixed and re-application of quarantine approval is required if changes of quarantine hotel => further delay in mobility plan

### Timeline

- Entry approvals are frequently issued later than the expected issuance date set by authorities
- Entry approvals must be followed up with relevant authorities frequently to make sure the approvals are issued on time

### Quarantine rule

- Quarantine rule is unclear if parents who are fully vaccinated stay with children who are not vaccinated
- Different local CDCs might request further documents from the regulated ones(i.e. the application forms, the information of vaccination dossier 1)

### Post quarantine rule

- Post quarantine rules are different from province to province



# Immigration

**1**

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## 2. International Flight Reopening Plan

# International flight re-opening plan

Based on the draft plan of Civil Aviation Authority of Vietnam to Ministry of Transportation on 22 October 2021

Stage	Passengers	Requirements for passengers	Requirements for the flight	Routine
<b>Phase 1</b> Combo flights End of 2021	Vietnamese citizens	+ having quarantine booking confirmation	Obtaining approval for each trip	Depending on approval of specific provinces
	International tourists	+ completed Covid-19 vaccination within 14 days to 12 months or recovered from Covid19 within 6 months prior to travelling; + having RT-PCR test within 72 hours + having a tour package with designated travel agencies		1 daily in the first month and 2 daily in the following months
<b>Phase 2</b> Pilot frequent int'l flights 1/2022-3/2022	Foreign passengers without requirements of entry permit from provincial PPC	+ completed Covid-19 vaccination within 14 days to 12 months or recovered from Covid19 within 6 months prior to travelling; + having RT-PCR test within 72 hours + having hotel quarantine booking and transportation confirmation + at airport		4 flights per week for each route



## 2. International Flight Reopening Plan

# International flight re-opening plan (cont')

Stage	Passengers	Requirements for passengers	Requirements for the flight	Routine
<b>Phase 3</b> Frequent flights 04/2022- 06/2022	Vietnamese citizens and foreigners who are fully vaccinated or recovered from Covid 19	+ completed Covid-19 vaccination within 14 days to 12 months or recovered from Covid19 within 6 months prior to travelling; + having RT-PCR test within 72 hours + NO quarantine requirement		7 daily for each route
<b>Phase 4</b> Regular int'l flight 07/2022 onwards	All passengers	Passengers are accepted for check-in if qualify under the medical requirements of Vietnam Ministry of Health at that time		Based on trade demand





## 2. International Flight Reopening Plan

### KPMG's points of view

- Vietnamese government has taken several steps with the aim to resume international commercial flights to help reboot the tourism industry and gradually re-open for regular business
- The above four phases are the current proposed plan and are subject to change depending on the consideration of the competent authorities and the situation of Covid 19 in Vietnam and around the world.
- Businesses should always remain up to date on the changes as they impact mobility plans of their foreign experts



# Immigration

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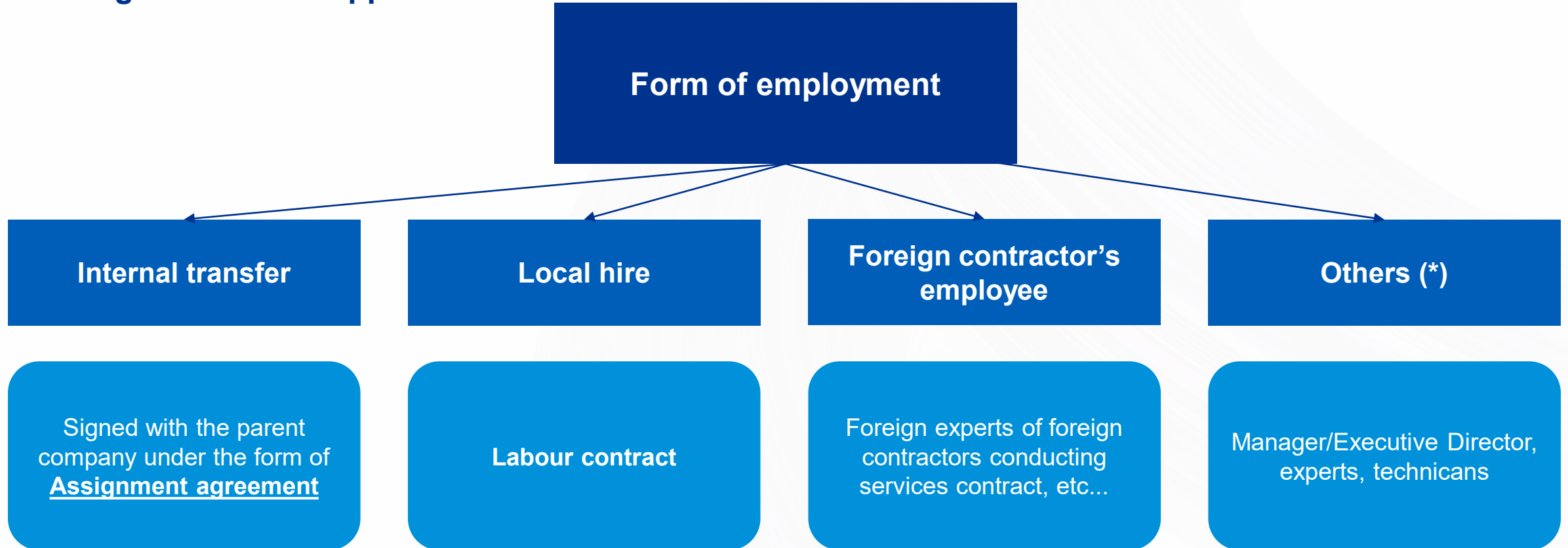
**Notable Points On Work Permit Application For Foreign Workers In Vietnam**



### 3. Notable Points On Work Permit Application For Foreign Workers In Vietnam

# Notable points in Degree 152 on foreign labour working in Vietnam

## Working form for WP application



(\*) Clause 1, Article 2, Decree 152/2020/ND-CP



### 3. Notable Points On Work Permit Application For Foreign Workers In Vietnam

## Notable points in Degree 152 on foreign labours working in Vietnam

Decree 152 clarifies certain cases that are exempt from a work permit, including:

- Foreigners married to Vietnamese citizens and living in Vietnam
- Owners or shareholding members of LLC with a capital contribution of VND3 billion or more
- Chairpersons or members of the BODs of JSCs with a capital contribution of VND3 billion or more
- Foreign experts, managers, CEOs, skilled workers going to work in Vietnam for less than 30 days per trip and no more than three trips per year
- Foreigners coming to Vietnam to set up a commercial presence of a foreign entity in Vietnam

Term of the work permit is set at maximum of 2 years and is renewed once only. To work longer than 4 years in Vietnam, a fresh WP application is required

More reporting requirements for Vietnamese sponsors, including:

- Bi-annual report on the status of foreign workers working for the employer to the relevant MOLISA/DOLISA
- Report on short-term business trippers 3 days in advance of the commencement of work in Vietnam

Ministry of Public Security to inform MOLISA of the list of foreigners who are granted with visa to work for/ with Vietnamese sponsoring organisations for foreign labour management

Changes in documentation proving expertise of experts, technician; temporarily amended by Resolution No.105



### 3. Notable Points On Work Permit Application For Foreign Workers In Vietnam

## Some notable solutions of the Resolution 105/NQ-CP

MOLISA are asked to implement flexible conditions on the issuance, extension and certification of work permits for foreign labour in Vietnam

- The university degree or above or an equivalent does not have to relate to the job position in Vietnam when applying for the expert's work permit
- The training field does not have to relate to the role or relevant experience when applying for the technical worker's work permit
- Previously issued work permits can be accepted as work experience of the expert or technical worker
- Notarization requirements for passports have been removed
- Foreign workers with valid work permits can be sent to another province or city for not more than six months without having to reapply for a work permit

The Ministry of Health has been tasked with providing guidance for mandatory quarantine to help laborers that come from different provinces

The Ministry of Foreign Affairs has been tasked with pushing mutual agreement on vaccine passport with other countries

Temporarily suspend unnecessary audits of businesses to a later time for those which were planned in 2021





# Current issues in granting work permits for foreign workers

Requirements for a university degree/bachelor's degree/master's degree instead of documents proving equivalent qualifications

There is no detailed instruction on what constitutes a practicing certificate to prove expertise of an expert

Can the WP exemption and work permit in other provinces be accepted as a certificate of experience?

What to do when the transfer time to another location is more than 6 months?



## Key takeaways

- Vietnamese government is gradually resuming international commercial flights which in turn will help reboot the tourism industry and business as a whole. The re-opening will include enhancing the entry procedure in a way to enable foreign investors and experts to enter Vietnam more easily and shortening the quarantine period
- There are more mechanisms to manage and supervise the use of foreign labour working in Vietnam, including more difficult conditions to qualify for a WP, more reporting requirements for businesses and information exchange mechanism between the labour and immigration authorities;
- Even though audits were suspended recently following the direction in the Resolution 105, we believe that labour authorities will reenforce the management of foreign labours working in Vietnam in the coming years when foreign labour audits tend to be more aggressive and more frequent. Therefore, businesses must ensure they are foreign-labour-compliant and are ready for the coming audits



### 3. Notable Points On Work Permit Application For Foreign Workers In Vietnam

## What can we do to support





2021 Tax and Legal Institute

# Personal Income Tax



**Ms Andrea Godfrey**

Partner  
Head of Global Mobility Services  
KPMG in Vietnam

# Personal Income Tax

**1**

**Notable Points Under Circular 80/TT-BTC**

**2**

**PIT Treatment for Covid-19 Related Expenses**

**3**

**Increment of SI Cost For Expatriate From 2022**

**4**

**Work From Anywhere**





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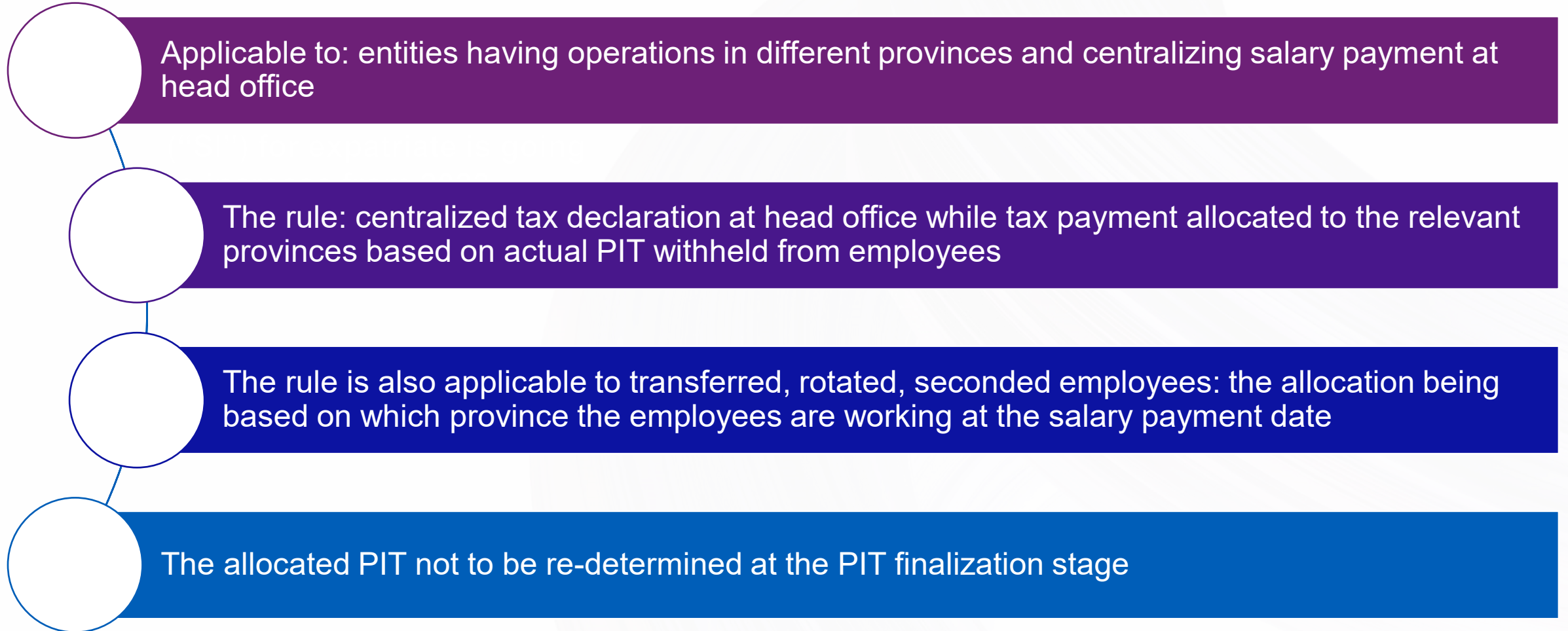
**Increment of SI Cost For Expatriate From 2022**

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# Centralized tax declaration and allocated tax payments

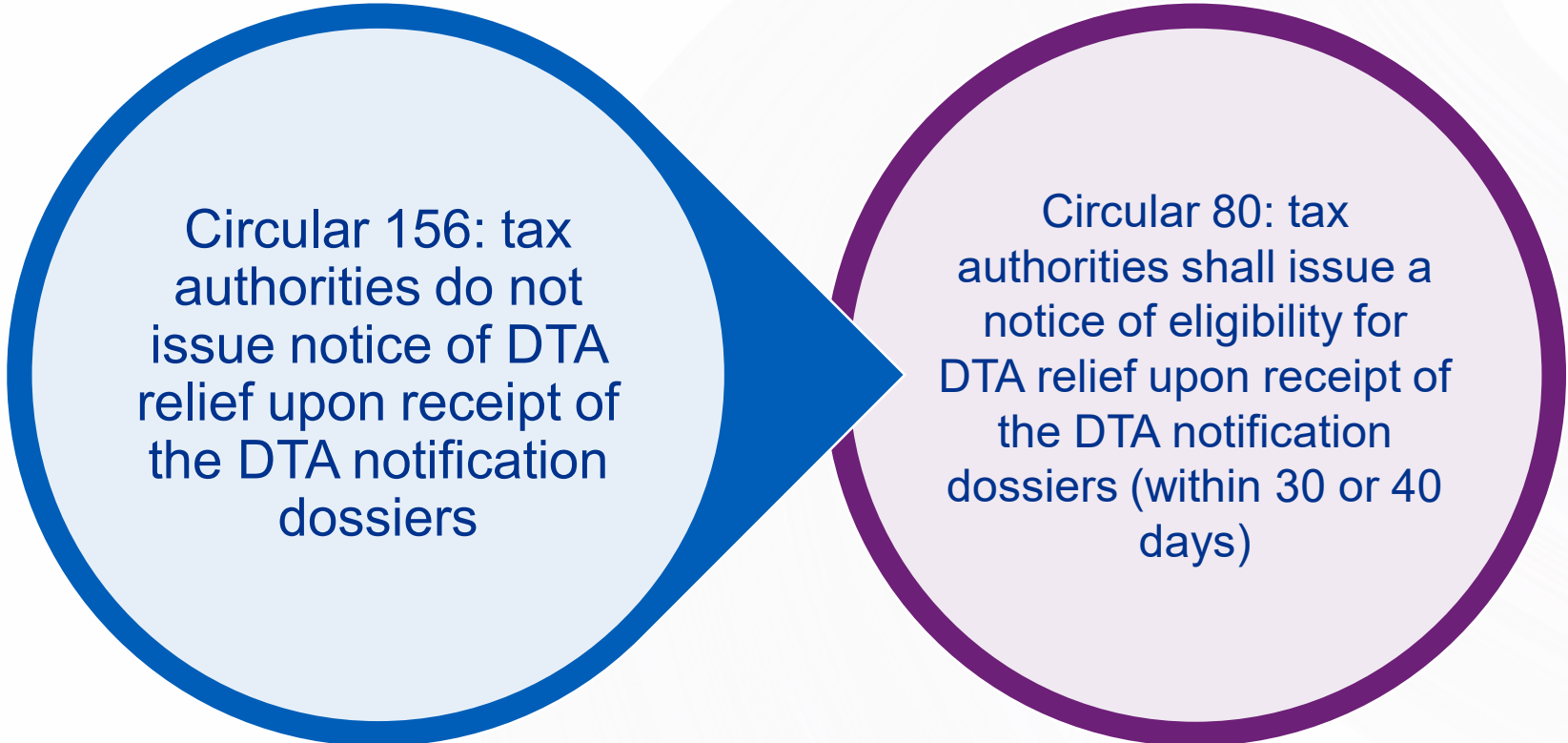


# Credit of tax paid overseas

- Circular 80 only stipulates the procedures for credit of tax paid overseas for tax residents coming from the countries having an effective DTA with Vietnam
- No provision is included for the credit of tax paid overseas under domestic rules
- Tax credit for employment income still valid under Circular 111, but the application for tax residents not coming from countries with an effective DTA with Vietnam may be challenged by local tax authorities in practice given the lack of procedures under Circular 80



# Changes in DTA application procedures



Circular 156: tax authorities do not issue notice of DTA relief upon receipt of the DTA notification dossiers

Circular 80: tax authorities shall issue a notice of eligibility for DTA relief upon receipt of the DTA notification dossiers (within 30 or 40 days)



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# PIT treatment for Covid-19 related expenses

Various guidance has been issued from local tax authorities, including taxable and non-taxable treatment

2020 guidance by the GDT: quarantine expenses are considered as employment benefits and thus are taxable for PIT purpose  
*(OL 5032/TCT-CS dated 26 November 2020)*

Latest guidance by GDT: Covid-19 related expenses are non-taxable  
*(OL 4110/TCT-DNNCN dated 27 October 2021)*



# PIT treatment for Covid-19 related expenses

The list of Covid-19 related expenses which are non-taxable under OL 4110/TCT-DNNCN:

- Quarantine expenses incurred in Vietnam and overseas relating to an overseas business trip as per the requirement of competent authorities (including accommodation, meals, Covid-19 test, transportation from immigration entry place or from the place where the employees are required to undergo the quarantine to the isolation facility, living costs in the isolation facility, etc.)
- Covid-19 testing fees, purchase costs of Covid-19 testing kits to employees
- The purchase costs of equipment to prevent Covid-19 at work
- Meal expenses and accommodation expenses of the employees under “3T” (three on spot)

*Note: the expenses must be actual and supported by proper supporting documents in accordance with regulations*



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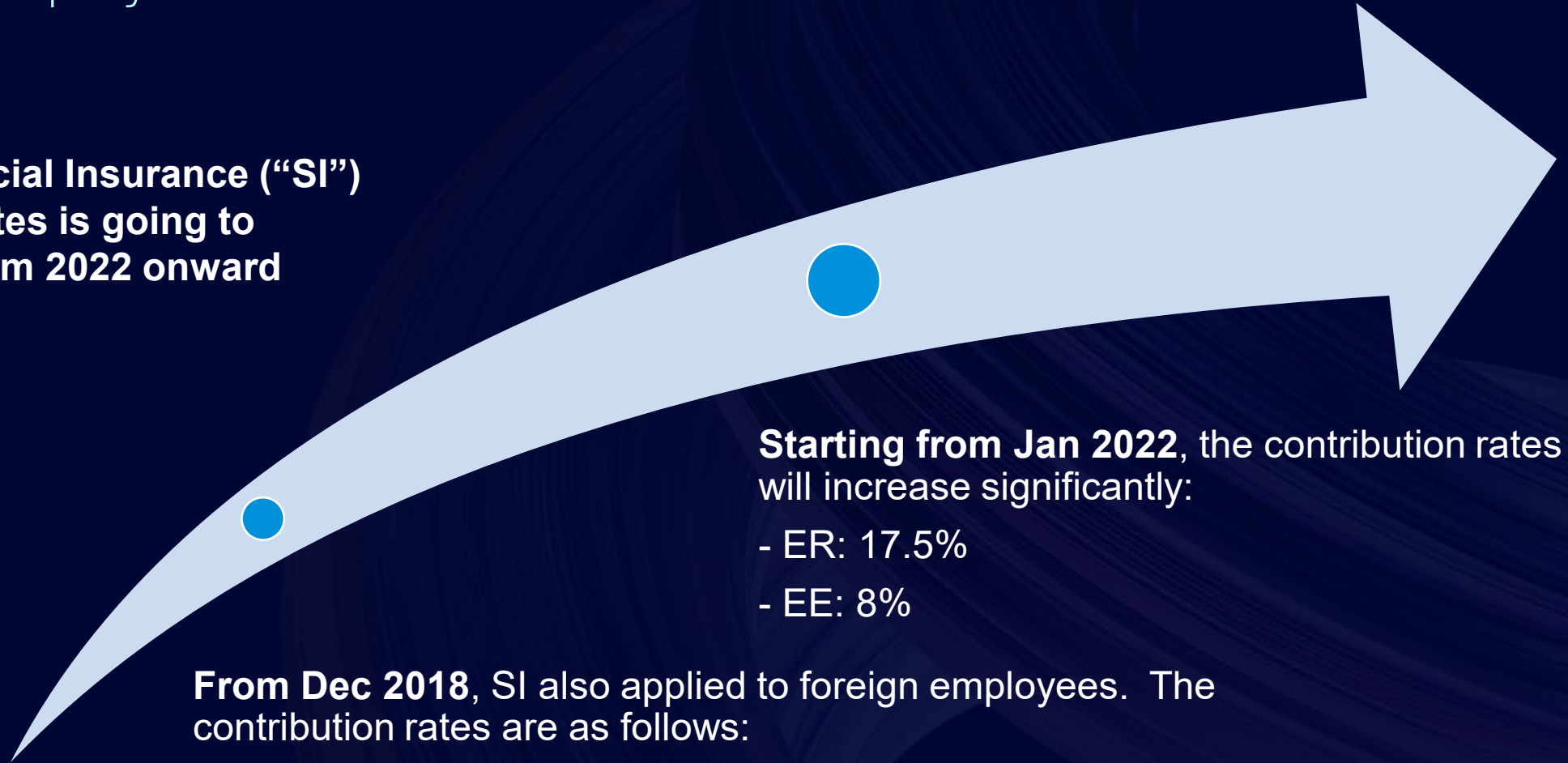
**Work From Anywhere**



# Plan for your employment cost in the future



**Cost for Social Insurance (“SI”) for expatriates is going to increase from 2022 onward**



**Starting from Jan 2022, the contribution rates will increase significantly:**

- ER: 17.5%
- EE: 8%

**From Dec 2018, SI also applied to foreign employees. The contribution rates are as follows:**

- ER: 3.5%
- EE: 0%



### 3. Increment of SI Cost For Expatriate From 2022

# It is time to plan

for organizations with a number of expatriates who are subject to SI contribution



**Planning ahead can give the employer an advantage in the future**





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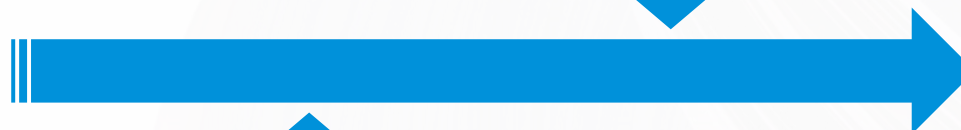
**Work From Anywhere**



#### 4. Work From Anywhere

# Transformation of workforce

***Covid-19***



***Traditional office***



***Technology  
advance***

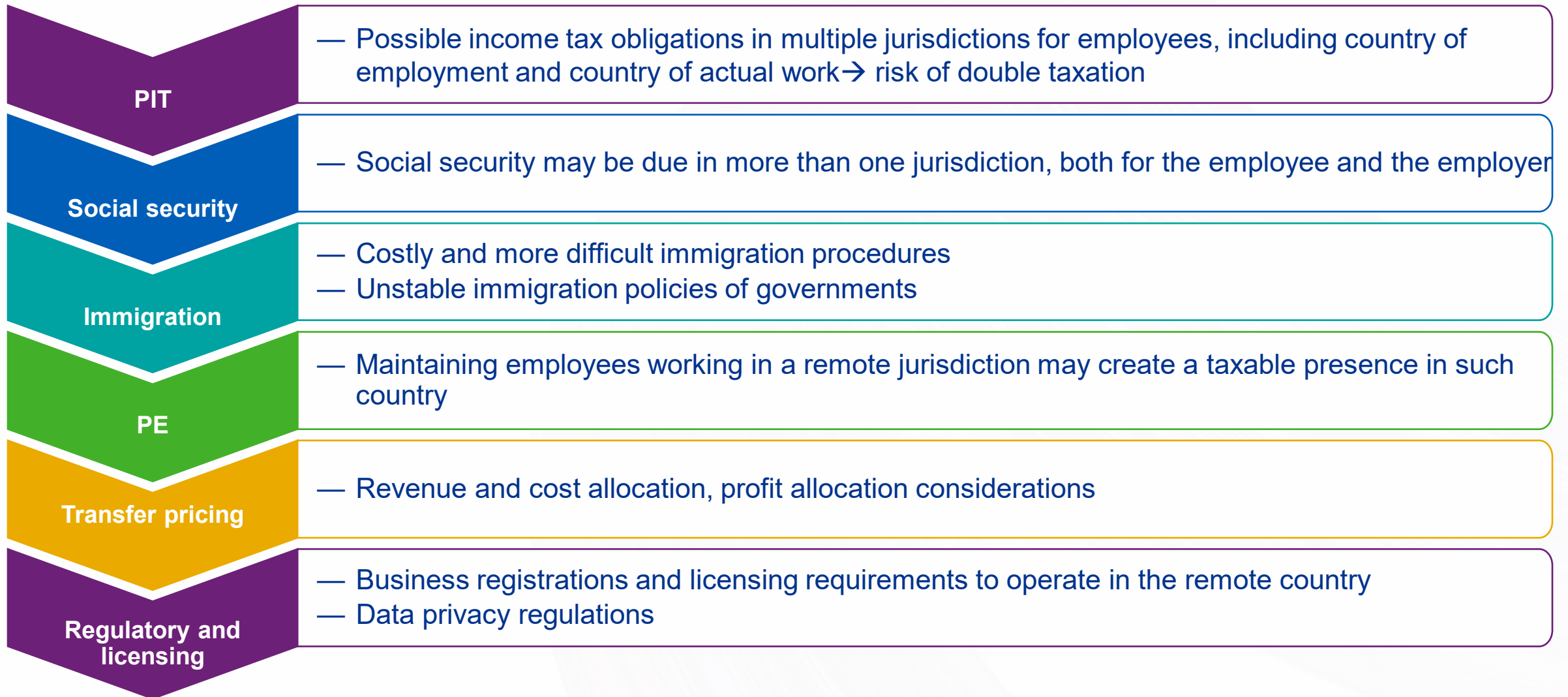


***Work from anywhere***



#### 4. Work From Anywhere

# Tax implications



## Wrap-up

### New points under Circular 80

- New set of PIT forms from 2021 PIT finalisation onwards
- Centralised tax declaration and allocated tax payment
- Credit of tax paid overseas
- Changes DTA application procedures

### Covid-19 related expenses

- Review expenses and supporting documents to assess proper tax treatment for the relevant expenses for PIT finalisation
- Keep updated with further development/ clarification on unclear points

### SI cost increase for expatriates

- Update the employees on their obligations
- SI cost projection
- SI cost optimization planning

### Work from anywhere

- Beware of tax implications of WFA program
- Determine key components of successful WFA programs: strategy and policy, compliance and supporting processes, risk assessment



# What we can do to support

## PIT finalisation

- PIT finalisation preparation
- PIT finalisation review
- Tax planning advice
- Dealing with international tax issues



## WFA risk analysis and outcome

- Risk analysis
- Policy development
- Enterprise-wide strategy

## Tax audit support

- Pre-tax audit review
- Support during tax audit
- Tax dispute resolution







2021 Tax and Legal Institute

# Legal Update



**Mr Nguyen Thanh Hoa**

Partner  
KPMG Law in Vietnam

# Notable regulations/policies issued in 2021

1

**Decree 31/2021/ND-CP guiding the Law on Investment 2020 (“Decree 31”)**

2

**Decree 85/2021/ND-CP amending Decree No. 52/2013/ND-CP on e-commerce (“Decree 85”)**

3

**Labour related policies in response to Covid-19 pandemic**

- Policies to support employees and employers in difficulty due to the Covid-19 pandemic: Decision 23/2021/QD-TTg, Decision 28/2021/QD-TTg, Official letter 2059/TLD and Official letter 377/CDVC
- Guidelines on Covid-19 control: Government’s Resolution 128/NQ-CP, MOH’s Decision 4800/QD-BYT and other guidelines of provincial PCs



# 1 Decree 31 guiding the Law on Investment 2020

**1.1**

**Lists of business lines limited from market access by foreign investors**

**1.2**

**Sources of investment capital**

**1.3**

**Additional documents required for obtaining M&A Approval**

**1.4**

**Spinning-off/separating and merging investment projects**

**1.5**

**New regulations on outbound investment**



# 1.1. Lists of business lines limited from market access by foreign investors

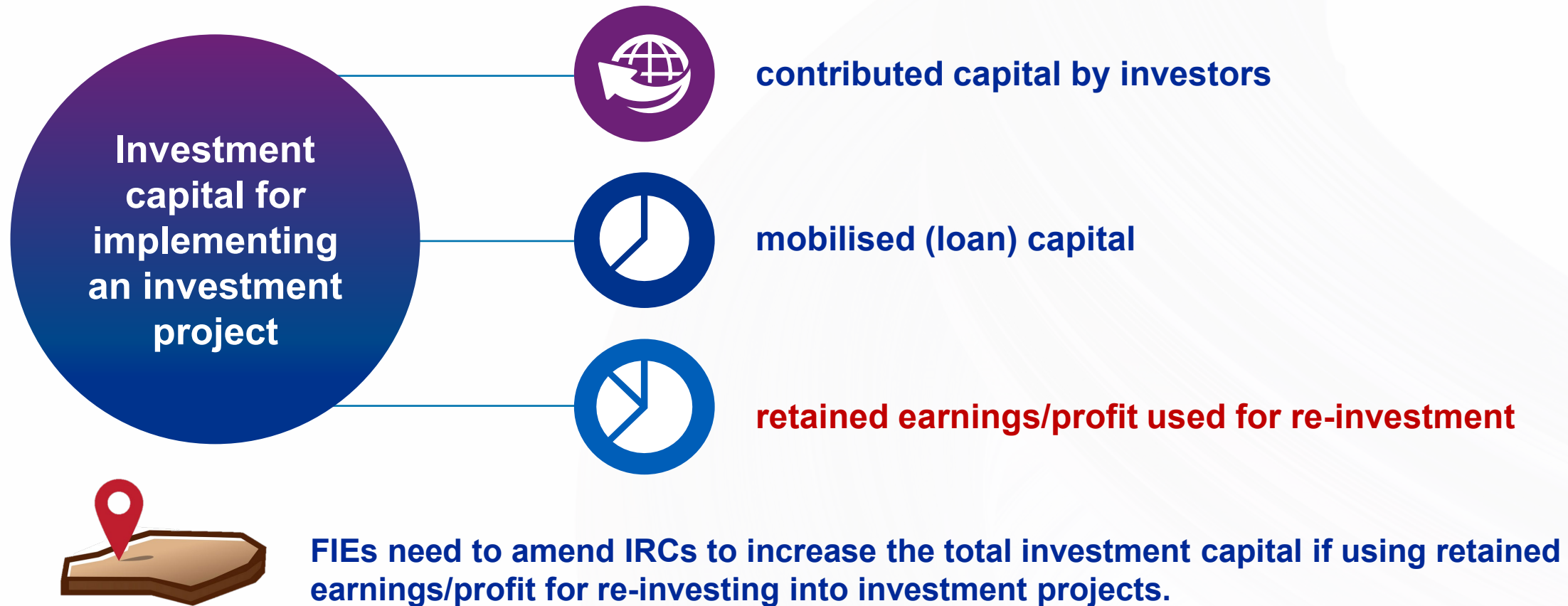


## For business lines without any commitment from the Vietnamese government on market access by foreign investors:

- foreign investors must comply with domestic regulations (if any)
- If there is no domestic regulations restricting foreign investors' market access: foreign investors are allowed to access market same as domestic investors



## 1.2. Sources of the investment capital





## 1.3. Additional documents required for obtaining M&A Approval



### In-principle agreement on the contemplated M&A transaction

- Documents to set out the framework of the transaction, such as Memorandum of Understanding, Term Sheet or In-principle Agreement
- Level of exposure to the licensing authority should be considered in the submitted documents

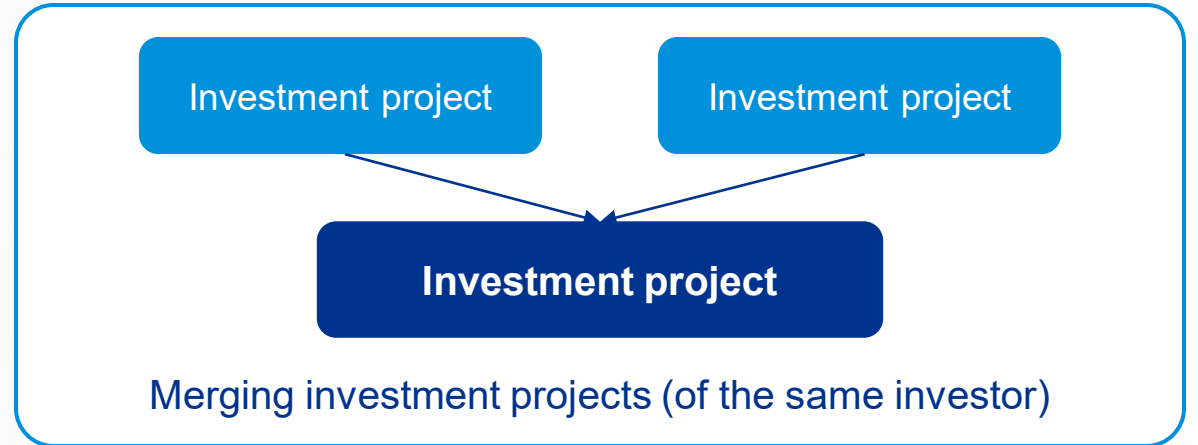
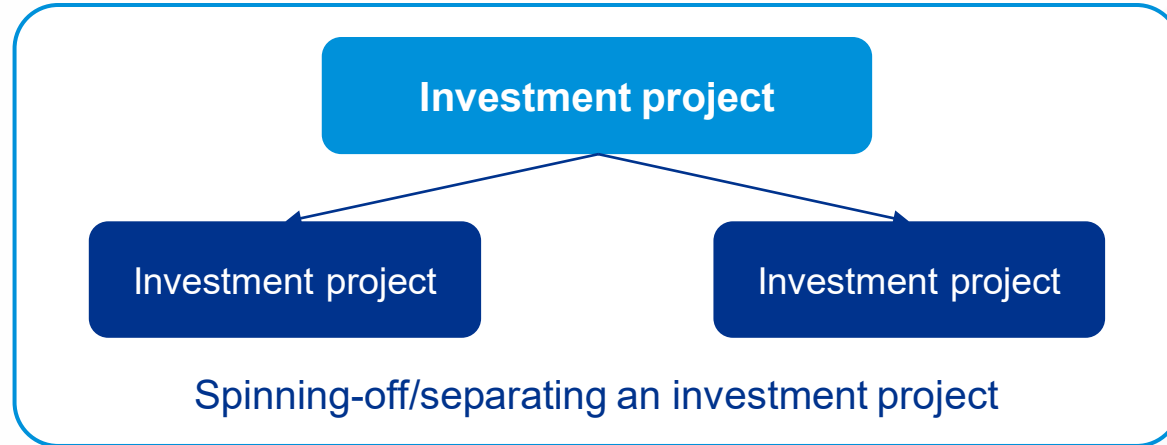


### Copy of the land use right certificate of the target company

- Required in case the target company has land use right in certain locations, EXCEPT for those located in industrial zones, export processing zones, high-tech zones, or economic zones.



## 1.4. Spinning-off/separating and merging investment projects



### Conditions

- Satisfying the conditions on land use, investment and other conditions (if any)
- No change in the conditions applicable to the investor issued in the in-principal investment policy decision or in the IRC **before** the spinning-off/separating & merging investment projects

### Procedures

1. Amendment of the investment in-principle approval/decision (if any)
2. Amendment of the IRC



## 1.5. New regulations on outbound investment

### Outbound investment by share swap

- Vietnamese investors allowed to use shares/capital contribution in Vietnam to pay for the acquisition of shares/ capital contribution of an overseas entity.
- Registration procedures:
  - Vietnamese investor to obtain an outbound IRC; then
  - Foreign investor to implement investment procedures in the entity in Vietnam.

### Outbound investment by FIEs with $\geq 50\%$ foreign ownership

- The investment capital used for outbound investment must be the investors' capital contribution, and not used for implementing the investment projects in Vietnam.

### Online procedure for outbound investment registration

- Applied to outbound investment projects with the investment capital of less than VND20 billion and not subject to conditional business lines for outbound investment.



## 2 Decree 85 on e-commerce

### 2.1

Types of e-commerce website

### 2.2

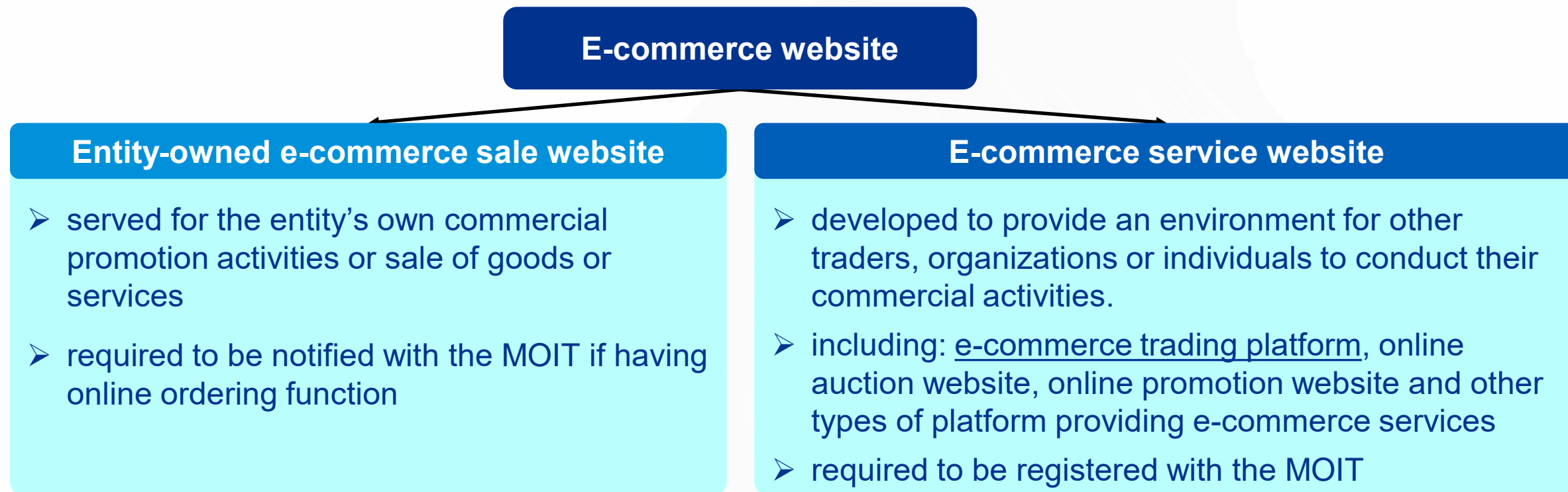
New form of e-commerce trading platform

### 2.3

Cross-border e-commerce activities of foreign entities



## 2.1. Types of e-commerce website

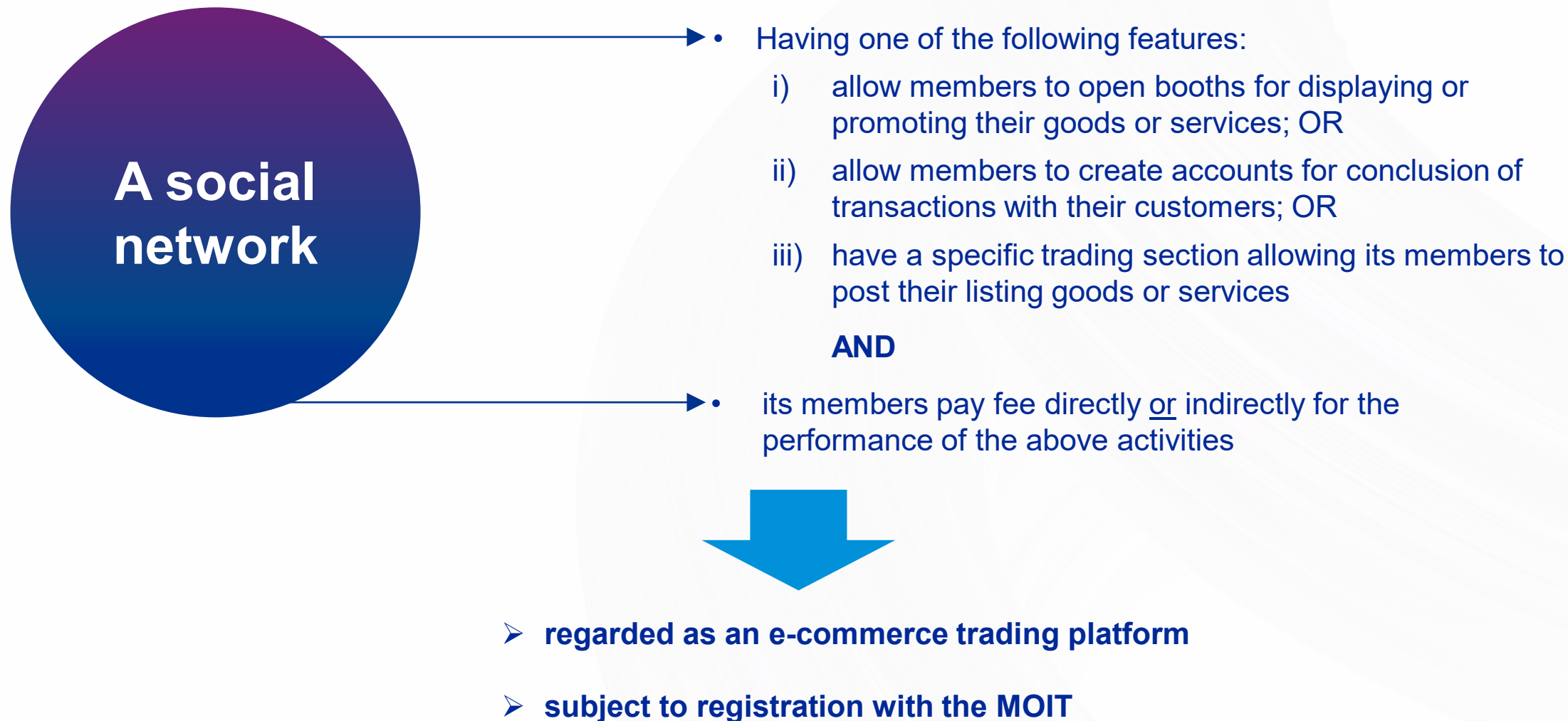


- **E-commerce services** means setting up e-commerce website for others to carry out commercial promotion activities or sale of goods or services.
- E-commerce service providers **exclude** (1) traders, (2) website design service providers, and (3) entities not directly participating in business, operation or coordination of activities in such website.

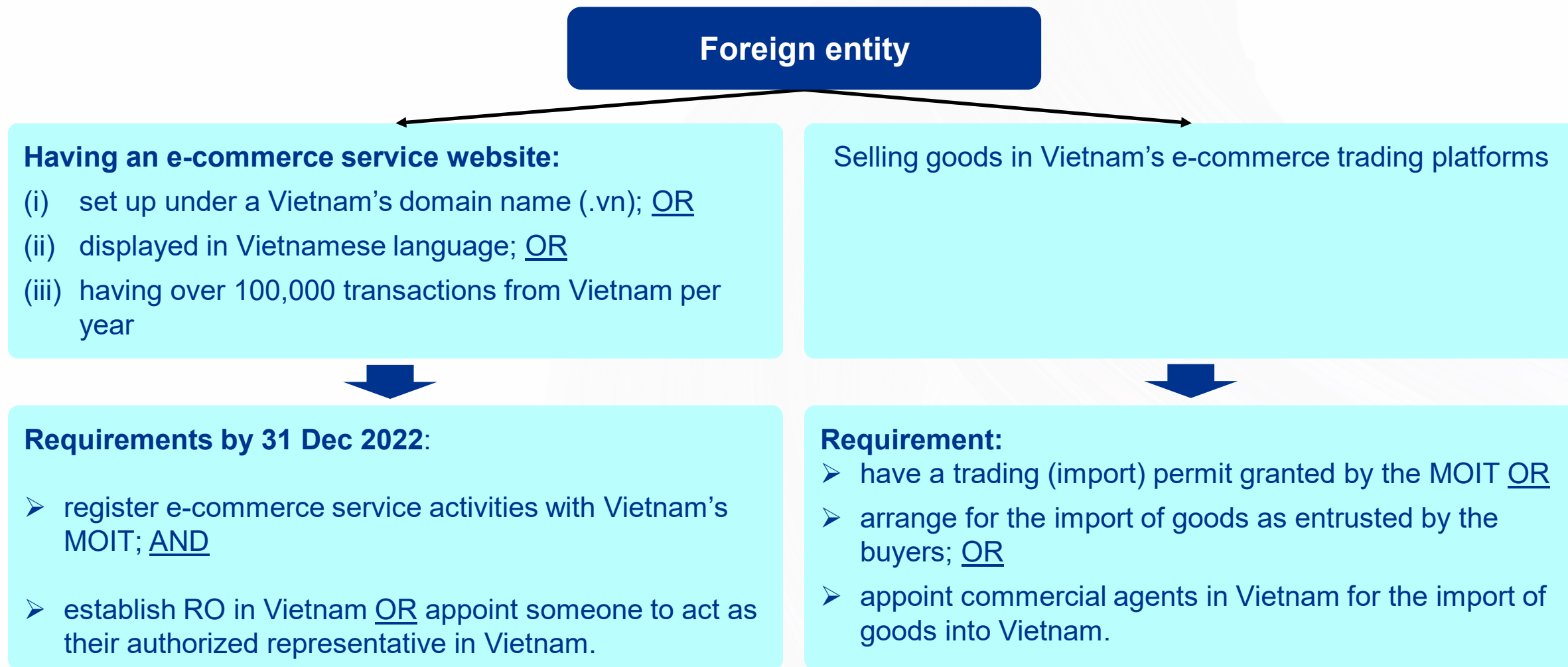




## 2.2. New form of e-commerce trading platform



## 2.3. Cross-border e-commerce activities of foreign entities



## 3 Labour related policies in response to Covid-19 pandemic

### 3.1

**Policies to support employees and employers**

### 3.2

**Vaccination requirement**



## 3.1. Policies to support employees and employers



**Support in social insurance & Trade union contribution**



**Support from unemployment insurance**



**Support for affected employees**



### 3. Labour related policies in response to Covid-19 pandemic

## 3.1. Support in Social insurance & Trade union contribution

Support policies	Support duration/level	Conditions
❖ 0% contribution to Labour accidents and occupational diseases insurance fund	1 July 2021 to 30 June 2022	The saving to be used to support employees
❖ Suspension of contribution to Retirement and Survivorship fund	<ul style="list-style-type: none"><li>▪ 6-month suspension from application date</li><li>▪ Maximum 12 months including the period entitled under the Resolution in 2020</li><li>▪ No interest for the suspended payment</li></ul>	<ul style="list-style-type: none"><li>▪ Having fulfilled or suspended contributions to the Retirement and survivorship fund at the end of April 2021; and</li><li>▪ Reduction of 15% or more of employees subject to SI as of the application date compared to April 2021</li></ul>
❖ Suspension of contribution to Trade Union fund	<ul style="list-style-type: none"><li>▪ Suspension until 31 December 2021</li></ul>	<ul style="list-style-type: none"><li>▪ Enterprises with the number of employees subject to SI having to temporarily resign from 50% of the total number of employees</li></ul>
❖ Exemption of Trade Union contribution	<ul style="list-style-type: none"><li>▪ Exempt from 1 May to 31 December 2021</li></ul>	<ul style="list-style-type: none"><li>▪ Employees with salary below the regional minimum level</li></ul>





### 3. Labour related policies in response to Covid-19 pandemic

## 3.1. Support from unemployment insurance

Support policies	Support duration/level	Conditions
❖ Financial support for vocational training	<ul style="list-style-type: none"><li>- VND1,500,000/ employee/month (USD66)</li><li>- Max 6 months</li></ul>	<b>All conditions required:</b> <ul style="list-style-type: none"><li>- UI contribution fulfilled for 12 months or more</li><li>- Having a change in structure or technology</li><li>- Revenue of previous quarter decreased 10% or more compared to same period in 2019/2020</li><li>- Having or co-ordinating with vocational training organisations to have training plans for employees</li><li>- Application dossier submitted from 1 Jul 21 to 30 Jun 22</li></ul>
❖ Supports from Unemployment Insurance Fund	<ul style="list-style-type: none"><li>- <b>For employees:</b> VND1,800,000 (USD79) to VND3,300,000/employee (USD145) 1 October 2021 – 31 December 2021</li><li>- <b>For employers:</b> UI contribution rate reduced from 1% to 0% 1 October 2021 – 30 September 2022.</li></ul>	<ul style="list-style-type: none"><li>- <b>For employees:</b> employees who are participating in UI scheme as of 30 September 2021 and those with the UI contribution period reserved</li><li>- <b>For Employers:</b> employers participating in UI scheme prior to 1 October 2021</li></ul>



### 3. Labour related policies in response to Covid-19 pandemic

## 3.1. Support for affected employees

Employees	Support duration/level	Conditions
❖ Suspension of labour contract, Unpaid leave	<ul style="list-style-type: none"><li>15 days to 1 month: VND1,855,000/person (USD81)</li><li>From 1 month: VND3,710,000/person (USD163)</li><li>Additional VND1,000,000/person for pregnant employees (USD44);</li><li>Additional VND1,000,000/child for employees raising children under 6 years old (for mother <b>or</b> father);</li><li>Period: May to December 2021</li></ul>	<ul style="list-style-type: none"><li>SI contribution fulfilled up to the suspension of labour contract/unpaid leave</li></ul>
❖ Work cessation due to quarantine or lockdown	<ul style="list-style-type: none"><li>VND1,000,000/person</li><li>Period: May to December 2021</li></ul>	<ul style="list-style-type: none"><li>SI contribution fulfilled up to the suspension date</li><li>Quarantine/lockdown for 14 days or more</li></ul>
❖ Termination of labour contract	<ul style="list-style-type: none"><li>VND3,710,000/person</li><li>Period: May to December 2021</li></ul>	<ul style="list-style-type: none"><li>SI contribution fulfilled up to termination date but not qualified for unemployment allowance;</li><li>Employers requested by competent authority for operation cessation</li></ul>



## 3.2. Vaccination requirement

Legal basis	Provision	Interpretation
Law on prevention and control of infectious diseases 2007	<ul style="list-style-type: none"><li>People are obligated to get vaccination for infectious diseases which are in the <b>List of infectious diseases subject to compulsory vaccination</b></li><li>Covid-19 is not yet included in such List</li></ul>	<ul style="list-style-type: none"><li><b>No express power</b> of either the government or an employer to <b>mandate an individual to get Covid-19 vaccination</b></li></ul>
Guidelines on Covid-19 control: <ul style="list-style-type: none"><li>Government's Resolution 128/NQ-CP</li><li>MOH's Decision 4800/QD-BYT</li><li>Other guidelines of provincial PCs</li></ul>	<ul style="list-style-type: none"><li>Vaccine coverage is one of criteria for (i) assessment of epidemic level and (ii) epidemic control in manufacturing &amp; business facilities and other organisations.</li><li>People travelling and/or attending indoor and outdoor gathering activities are required to:<ul style="list-style-type: none"><li>(i) have received adequate doses of COVID-19 vaccine after 14 days; or</li><li>(ii) have relieved of COVID-19 within 6 months; or</li><li>(iii) have negative SARS-CoV-2 test result within 72 hours</li></ul></li></ul>	<ul style="list-style-type: none"><li><b>Measures to ensure epidemic control should be provided in the internal labour policies</b>, including requiring employees to show evidence of vaccination, or Covid-19 relief, or negative testing result when coming to work.</li><li>Failure to comply with such policies can result in <b>disciplinary measures</b> imposed on employees</li></ul>



- Unilateral termination or suspension of labour contracts with employees refusing vaccination is NOT explicitly permissible.
- Companies should check the most up-to-date regulations/guidance for appropriate actions.



# Closing Speech



## Hoang Thuy Duong

Partner  
Head of Tax  
KPMG in Vietnam

With 20 years of experience in KPMG, including 15 months at KPMG Australia at Global Linked Transaction Pricing (“GDLK”) and Corporate Tax Consulting, Mr Duong is leading the tax experts in KPMG to assist clients in various industries. Moreover, Mr Duong also involved in the formation of many policy such as Vietnam’s first Advance Pricing Agreement (APA) and Decree 20/2017/ND-CP.





2021 Tax and Legal Institute

## March To New Normal

# Thank you!

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# Speakers



## Le Thi Kieu Nga

Partner  
Head of Corporate Tax  
KPMG in Vietnam

Nga has more than 20 years of experiences in a broad range of advisory process on tax, corporate and statutory issues for clients including multinational organizations, foreign and local financial institutions, foreign invested companies and local national corporates in Vietnam. She has been advising clients on tax, investment and regulatory issues, including market entry, tax due-diligence, mergers and acquisition, divestments and corporate restructures, and investigations and audits by the local tax authority.

# Speakers



## **Nhan Huynh**

Partner  
Head of Integrated International Tax  
KPMG in Vietnam

Nhan has extensive experience in tax and customs consulting, especially in tax and duty planning and restructuring, tax efficient supply chain management, and dispute resolution. He is also the bridge between clients and the authority on customs and tax matters.

# Speakers



## **Andrea Godfrey**

Partner  
Head of Global Mobility Services  
KPMG in Vietnam

Andrea is a very experienced tax professional having worked in both practice and industry for over 30 years. As the leader of the Global Mobility Services (GMS) practice at KPMG in Vietnam, Ms Godfrey leads her innovative and experienced team to create a key tax and immigration specialism with strong links into the global GMS practice and other areas of the KPMG Vietnam practice, serving clients in various industries including trading, manufacturing, transportation, and financial services.

# Speakers



## Nguyen Thu Hong

Partner  
Head of Tax Disputes Resolution & Controversies  
KPMG in Vietnam

Huong has over 20 year experience of professional tax consulting and liaison with tax regulators. Huong consults MNCs in tax controversies and disputes, including assistance during tax audits carried out by the tax authorities, working out the strategy and plan for resolving the disputes at local/central tax authorities and ministry level. Huong possesses exclusive working networks with the regulators at Ministry of Finance and General Department of Taxation and leads the practice of providing timely update on the potential and new tax policies.



# Speakers



## Ta Hong Thai

Partner  
Corporate Tax  
KPMG in Vietnam

Thai has 20 years' experience as a Tax and Corporate Services professional in Vietnam. He focuses on tax advisory and tax compliance, M&A transaction services, corporate holding and investment holding structure advisory services, and has gained extensive experience through advising foreign investors, foreign invested enterprises, foreign companies doing business in Vietnam as foreign contractors, on tax, investment and regulatory issues.



# Speakers



## Ho Thi Bich Hanh

Partner  
Corporate Tax  
KPMG in Vietnam & Cambodia

With over 24 years of experience as a Tax and Corporate Services professional, Hanh has gained in-depth knowledge and experience through advising tax, investment and regulatory issues for many Vietnamese corporations and foreign companies in different industries. She also advised and involved in tax due diligence, merger and acquisition, divestments and corporate restructures, structuring advice, tax inspection and petition to central tax authority.

# Speakers



## Mr Nguyen Thanh Hoa

Partner  
KPMG Law in Vietnam

Mr Hoa has over 20 years of professional experience in legal and tax in Vietnam, including more than 10 years in the Deals-Tax-Legal practice of KPMG in Vietnam. He is leading the Market Entry as well as the Corporate Restructuring groups of KPMG Law. He has been advising and assisting many foreign businesses in various sectors for their entry into and/or expansion of their businesses in Vietnam.



# Speakers



## **Ms Bui Thi Thanh Ngoc**

Partner  
KPMG Law in Vietnam

With 23 years of experience in legal advisory field and history working as legal counsel for a top ranked Korean telecom group, founding partner of a leading Vietnamese law firm, partner of a French leading law firm in Vietnam, Ms Ngoc is now assisting companies in legal matters relating to M&A and Business Restructuring, Dispute Resolution and Arbitration, Corporate Governance and Commercial Contract Drafting. Her client portfolio includes multinational companies, transnational companies and top ranked Vietnamese companies.

# Speakers



## Nguyen Ngoc Thai

Partner  
Corporate Tax  
KPMG in Vietnam & Cambodia

With 15 years of experience in KPMG, Mr Thai has in-depth understanding of local regulatory system including indirect tax, corporate tax and individual tax. He has taken leading responsibility for a broad range of advisory process on tax, corporate and statutory issues for clients including multinational corporations, foreign invested companies in Vietnam and large Vietnamese companies.



# Speakers



## Tran Thi Thuy Ha

Partner  
Transfer Pricing  
KPMG in Vietnam

Ms Ha has more than 14 years of experience in consulting for many multinational companies from Japan, Australia, Europe, the United States and the Asia Pacific region in dozens of consulting projects on transfer pricing inspection and tax dispute resolution, among which most cases have been resolved immediately during the inspection process or through appeal after the inspection.

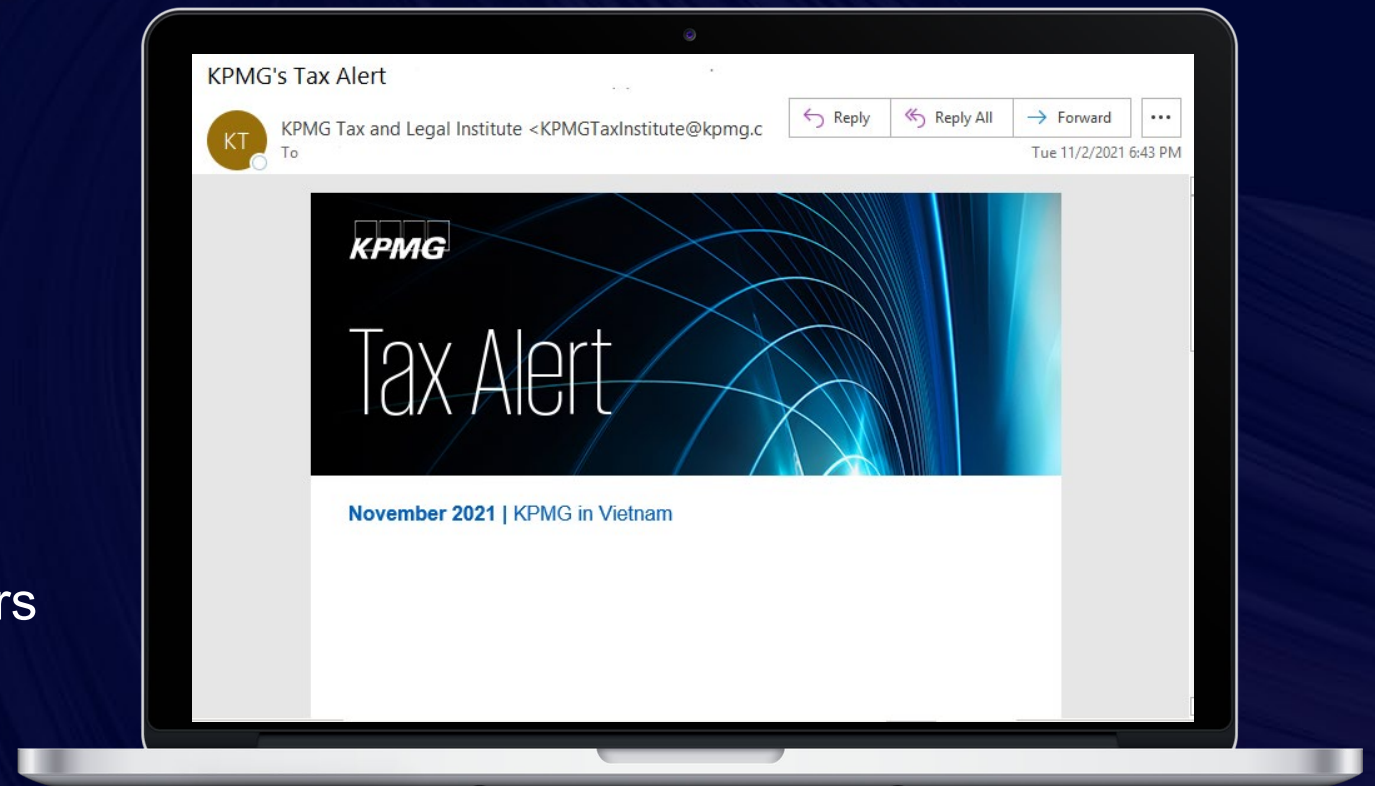




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