



Risk Management in Tax and Customs Audits

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1. Tax Audits and Risk Management

- Tax Audits/Inspections from a governmental perspective
- Process for Managing Corporate Tax Risks
- Typical challenges faced by companies in the Process of Managing Tax Risks
- Tax audit support



Tax Audit from the Tax Authority's Perspective

Tax Audit and Inspection Process

Scanning and Audit plan development

The tax authorities determine whether a company or other entity suspected of tax violations is subject to investigation/audit based on corporate documents and information.

01

Conducting on-site audit / inspection at companies

Requesting documents, ledgers, or explanations from companies, conducting meetings

03

02

Announcement of audit/inspection decision

The audit team leader presents the investigation plan, including time and participants, to the company representative.

04

Issue draft audit/inspection conclusion After receiving the investigation/audit report, the company is required to present its opinion and explain the issues raised.

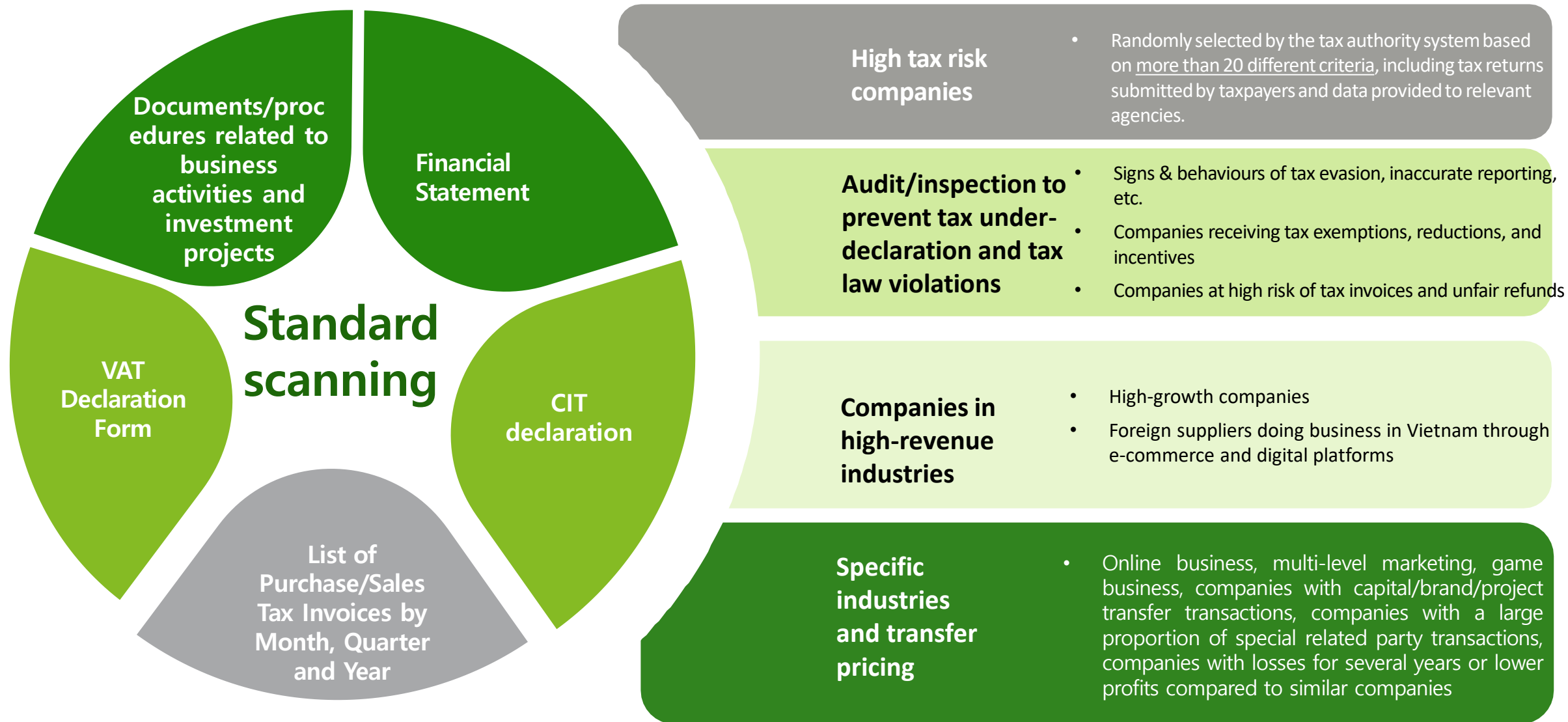
05

Announcement of final audit/inspection conclusions and decision on handling of violations

Agree to the matters raised by the tax authorities, sign the investigation report, and handle the violations according to the regulations. 5

Tax investigation from the tax authorities' perspective

Tax audit & inspection process



Process for managing corporate tax risks

Corporate Tax Risk Management/Control Process

01

Comprehensive risk analysis

- Analysis of business models and macro factors that cause tax risks
- Analysis through tax documents

02

Review and confirm on specific issues

- Analysis by specific issues
- Data analysis of each department of the company

03

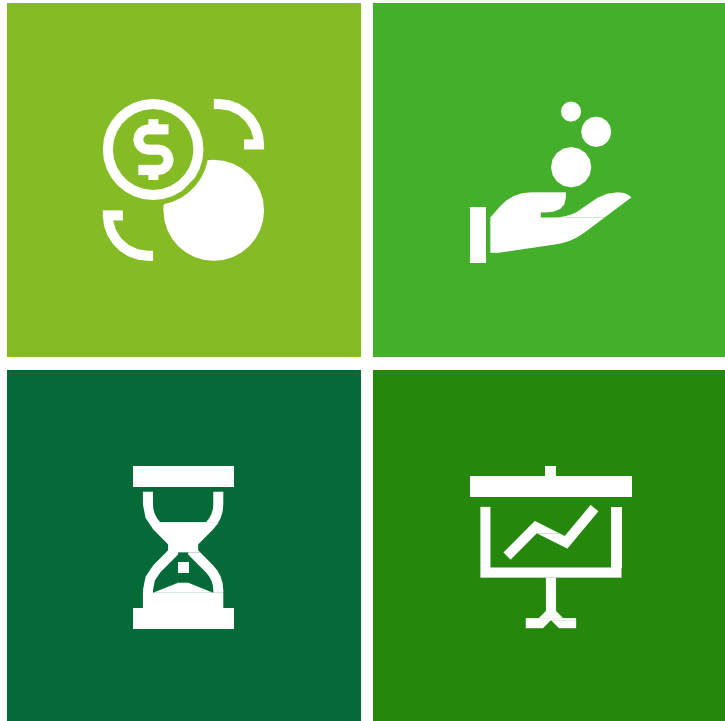
Prepare required supporting documents

- Collect and store all relevant documentation
- Coordination of risk assessment and reporting (if necessary)

Process for managing corporate tax risks

Analysis of business models and macro factors affecting tax risks

분석



Risks by Business Type

Listed company, sole proprietorship/limited company, branch, business place, etc.

Risks according to corporate form

Issues by business sector

Whether the company is in an industry with high tax risk (e.g. real estate, e-commerce, hotels, construction, agriculture and forestry, manufacturing, services, etc.)

Stages of a Business Life Cycle

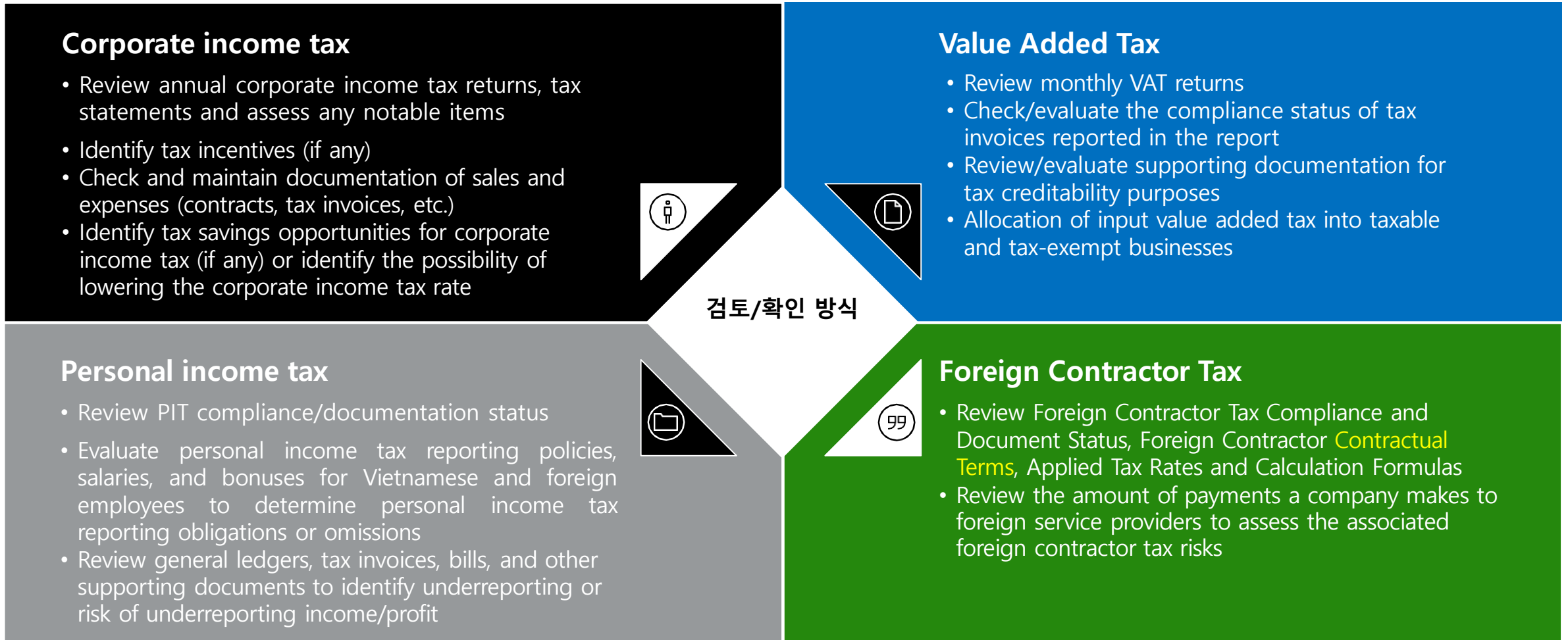
There is a possibility that different tax risks may arise at each specific stage (e.g. investment stage, operation stage, dissolution/division/merger stage).

Financial Data

Analysis of financial information and data, including published financial statements, tax returns, and related party transactions

Process for managing corporate tax risks

Overview of Issues by specific tax categories



Difficulties faced by companies in the tax risk management process

Difficulties faced by companies in the tax risk management process

Lack of support from each department

- Employees in other departments believe that all tax issues are with the Finance/Tax department

The gap between tax regulations and practice

- Is the solution adopted by the company the best choice?



Lack of understanding or misunderstanding of tax regulations

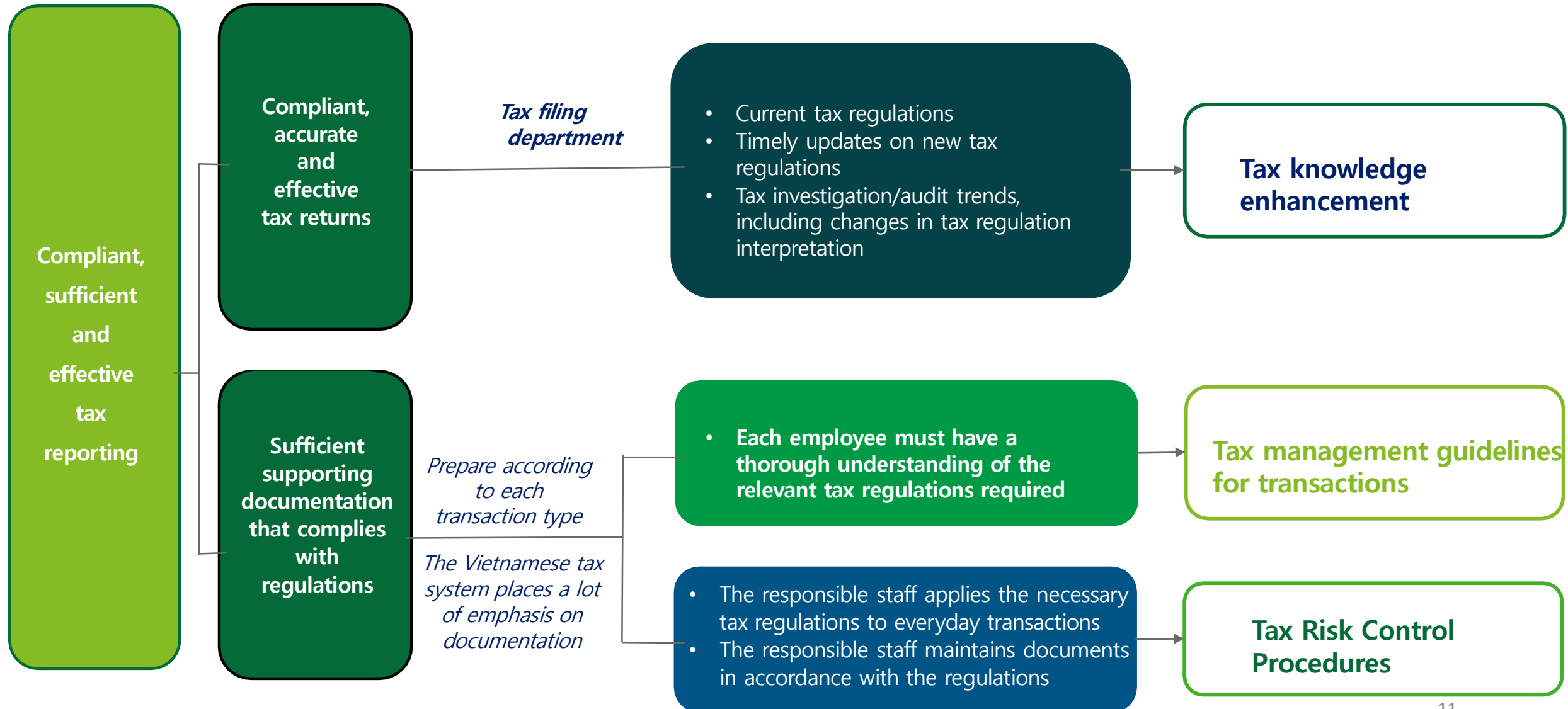
- Insufficient documentation
- Inconsistency
- Non-qualified supporting docs

Change of person in charge

- Lack of information on past transactions
- Lack of understanding of business operations

Difficulties faced by companies in the tax risk management process

Pre-Management and Control of Tax Risks



Sungshin's Tax audits support

Step 1 – Pre-audit support

Targets:

Review the investigation preparation plan and key tax issues to identify risks.

Scope of work

- ✓ Interview key personnel of the company to gain a better understanding of operational activities and key transactions
- ✓ Gather and review the necessary information in consultation with the accounting department
- ✓ Review previous tax audit reports or discussion documents (if available) to identify issues that pose a high tax risk.

Step 2 – Support during audit/inspection

Targets:

- Support for implementing supplementary plans to reduce tax risks
- Issue explanation support

- ✓ Support companies to promptly explain and discuss with the tax audit team on issues challenged
- ✓ Consult with the tax audit team when necessary & support immediate preparation and submission of additional requested documents
- ✓ Participate in meetings between companies and the tax investigation team (including the investigation team's requirements) when necessary
- ✓ Advise on requests from the tax investigation team
- ✓ Support confirmation/discussion with tax authorities

Step 3 – Post-audit Support

Targets:

Complete the company's explanation of the issue, provide comments on the working minutes & assist with any necessary post-audit actions (if any).

- ✓ Keeping the company updated on progress
- ✓ Providing additional clarification on unclear issues and advice on strategies to address additional challenges from the tax audit team
- ✓ Attend and assist with meetings with the tax audit team on unclear issues, if necessary
- ✓ Advise the company on strategies to take in the event of adverse audit results (e.g. appeal procedures, etc.)

2. VAT refund

- *VAT refund at the investment stage*
- *VAT refund for export activities*



VAT refund at the investment stage

Conditions for VAT refund at the investment stage

- 1** Cumulative purchase VAT (after deduction) for the investment stage of **VND300 million & above**
- 2** **Before starting** business activities
- 3** **Proper VAT declaration** for refund purpose of investment stage
- 4** **Sufficient VAT refund documentation**



General Issues

Conditional Business License

In addition to ERC and IRC, other business licenses under special laws (e.g. Construction Law, Investment Law, etc.) may be required for VAT refund.

Qualified trial production

The tax authorities assess whether revenue generated during the trial production process is considered revenue generated during the “commercial operation” period. If it is determined that commercial production has begun, the VAT refund may be denied or the refund period may be shortened

VAT reporting and offset arising from multiple businesses

Since VAT regulations require separate VAT declarations for investment projects, tax authorities assess compliance with VAT declarations, payments and inter-project offsets to assess the amount of VAT refunds.

Tax invoices issued by a company authorized by the investor and tax invoices issued by a tax avoidance vendor

Tax authorities will strictly evaluate invoices issued in the name of a company or investor that is on the list of tax avoidance entities or has a high risk of tax evasion.

VAT refund for export activities

Conditions for VAT refund on export activities

- 1** Qualifying **exports of goods and services** under VAT regulations
- 2** **More than VND300 million** after offsetting VAT from domestic sales
- 3** **Maximum 10% of export sales** per refund period
- 4** Sufficient **VAT refund documentation** related to export transactions (contracts, tax invoices, customs declarations, non-cash payment certificates, etc.)



General Issues

Examples of improper “exports”

- Goods sold to foreign enterprises are designated to be delivered to other Vietnamese enterprises, and the foreign enterprises have representatives in Vietnam.
- Certain services that cannot be proven to have been consumed overseas or in export processing enterprises (“EPZs”).

Discrepancies between documents (contracts, tax invoices, payment amounts, etc.)

- Tax authorities tend to carefully review relevant tax invoices, VAT returns, contracts, payment amounts and related documents (completion certificates, handover minutes, etc.)

Differences between data recorded by tax authorities and taxpayers

Sales VAT and purchase VAT data are as follows:

- Customs and accounting data for import and export transactions
- System for company VAT reporting and sales/purchase tax invoices for tax authorities

Input VAT declaration

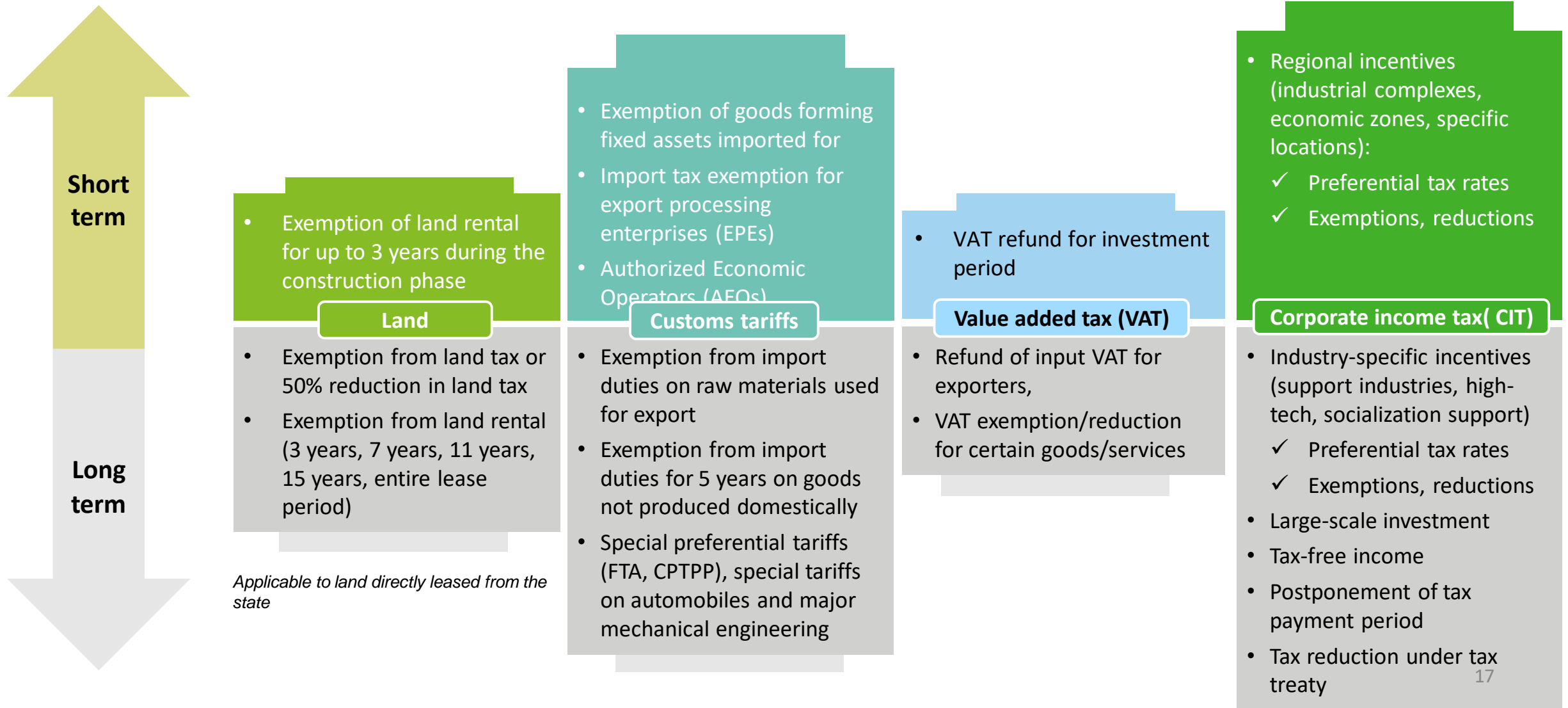
- You must declare input VAT in the month in which you issue your tax invoice, which may affect the amount of input VAT you can reclaim.

3. Investment incentives

- *Incentive system*
- *Corporate income tax incentive system*



Investment incentive system



Corporate Tax Incentive System

Incentive criteria

Incentives by Investment Location

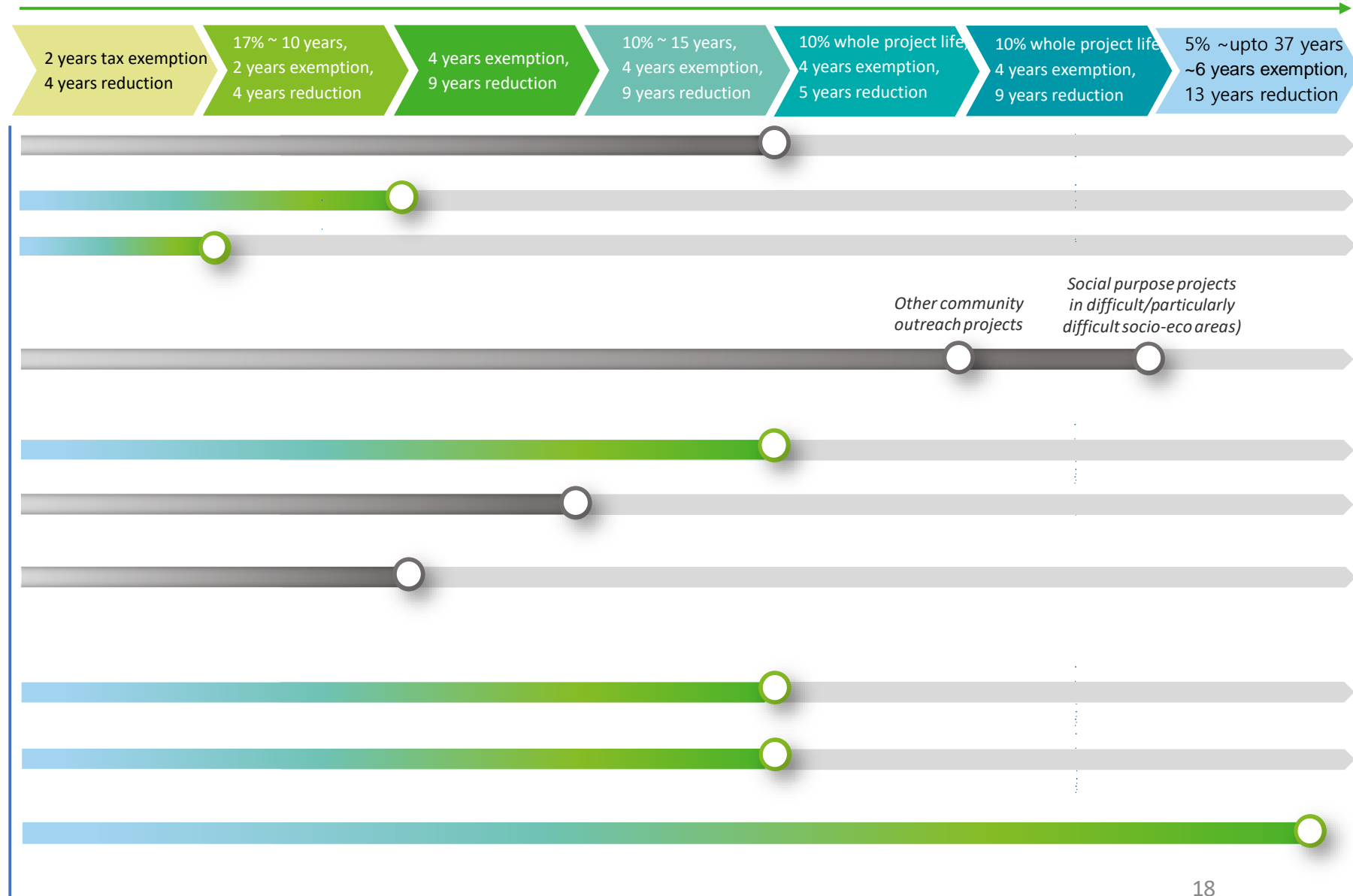
- **Special incentive locations** (especially difficult socio-economic areas, Economic zone, High-tech zone, IT Specialized zone) (*1)
- **Difficult socio-economic areas**
- **Industrial zone**

Incentives by specific Industries

- **Social purpose businesses** (education, job training, health, culture, sports, environment, publishing, media, etc.)
- **Specially encouraged industries (advanced technology, support industries, software, infrastructure, energy, environment, new raw materials)**
- **Specially Incentive Sectors** – Science & Technology Enterprises (STE)
- **Encouraged industries** (advanced steel, energy conservation, agriculture, traditional businesses)

Incentives by Investment Scale

- Projects with investment capital of VND 12 trillion or more, completed within 5 years and using cutting-edge technology
- Projects with investment capital of VND 6 trillion or more, annual turnover of VND 10 trillion or more, or with more than 3,000 regular employees, invested within 3 years
- Innovation and R&D centers with investment capital of VND 3 trillion or more, completed within 3 years with investment capital of VND 1 trillion, and projects belonging to special preferential industries with investment capital of VND 30 trillion, completed within 3 years with investment capital of VND 10 trillion



Sungshin's Support for Corporate tax incentives



Pre-review

- Review the corporate tax incentives currently being applied by the company to identify risks
- Review opportunities to upgrade corporate tax incentives currently being applied by the company (Ex. Hightech, Supporting Industry, etc.)
- Advice on optimizing corporate tax incentives for new investments
- Global Minimum Tax Impact Analysis Advisory



Support for application/update for corporate tax incentive

- Assist in applying for and obtaining certification for appropriate corporate tax incentives applicable to the company
- After confirming the progress with the responsible officials, we provide persuasion support



Post-management of corporate tax incentives

- Post-management support after new corporate tax incentives are certified
- Training support for relevant staff
- Risk Review for New Corporate Tax Incentives

4. CUSTOMS

- *Customs Audit & Inspection Trends*
- *Key issues in Customs Audit on Export Manufacturing (Processing) and EPE model*
- *Post-Clearance Audit (“PCA”) Support*
- *Updates on On-the-spot Export and Import Transaction*



Customs Audit Trends

Selection of customs audit/inspection subjects

- "High-risk" customs compliance rating (Level 4 - Poor compliance, Level 5 - Non-compliance)
- "High-risk" business model (Export manufacturing/processing; EPE), significant changes in import-export turnover
- High-value duty refunds
- When incorrect data submission is found or customs violations are suspected

Key issues in customs investigations

- **For export manufacturing/processing and EPE:**
 - ✓ Inventory management for duty-free goods (including the submitted annual customs finalization report "CFR") (*Main topic)
 - ✓ Certification of Vietnamese origin of exported goods (*Main topic)
 - ✓ Import duty exemption for goods imported to form fixed assets used in investment incentive projects
- **Import and export procedures:**
 - ✓ Customs valuation for imports/exports
 - ✓ HS classification for imports

Industries Focused on Customs Investigation

- Electronics industry (electronic equipment/components);
- Consumer goods (frozen food/beverages/alcohol/tobacco);
- Industrial products (automotive tires/steel/wood/minerals);
- Life sciences and healthcare (medical devices/medicines).

II - Key issues in Customs Audits on Export Manufacturing (Processing) and EPE

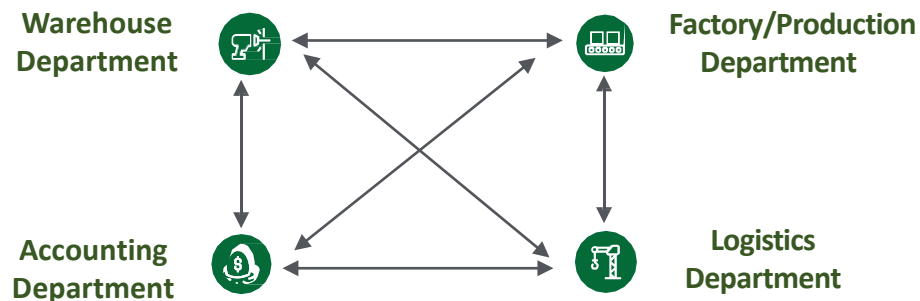
1 - Inventory management for duty-free goods (including annual CFR submitted)

Duty-free system

- ✓ In the case of goods (raw materials/parts/samples, etc.) imported for export manufacturing (consignment processing)
 - Exemption from customs duties
 - Exemption from value added tax ("VAT")

Requirements

1- The use of duty-free goods should be managed according to the purpose registered with the Vietnam Customs Authority, which requires cooperation between relevant departments



2- Within 90 days from the end of the fiscal year, a **Customs Finalization Report ("CFR")** must be submitted to the Vietnam Customs Authority (including the Bill of Materials (BOM) report).

Customs Approach

- ✓ **Before Post-clearance Audit ("PCA"):**
 - Short time gap between Audit decision date and on-site PCA start date;
 - Request for PCA delay – not acceptable to Customs Audit Team,
 - Request all data to be submitted prior to on-site PCA.
 - Have means to metabolize data and identify potential risk areas to focus on during PCA
- ✓ **During PCA:**
 - Interviews with multiple departments to cross-check usage of duty-free goods, actual BOM during production, scrap disposal, etc.
 - Request additional evidence to justify the verbal explanation provided by the company
 - Request clarification of identified inventory differences in a short period of time

Tariff impact



(+)/(-) Duty on inventory difference



Imposition of fines and interest on delay



Other: Downgrade of customs compliance level and impact on AEO (Authorized Economic Operator) status

II - Key issues in Customs Investigations on Export Manufacturing (Processing) and EPE

2 - Proof of origin of exported goods in Vietnam



Background on the investigation into proof of origin

- 1 Issues raised by other countries (FTA signatory countries) regarding the Certificate of Origin ("C/O") issued by the competent authorities of Vietnam
- 2 Increase in tariff/non-tariff measures on goods produced in certain areas
- 3 Vietnam Customs Department issues new regulation granting the right to audit Vietnamese origin certificate declarations for exported goods



PCA Tariff Approach

- Review the adopted methodology and data sources (BOM, etc.) used to calculate the country of origin criteria, and
- Request for review of calculation data based on Vietnam country of origin criteria



Impact on customs and import clearance procedures



Imposition of customs duties (if any), administrative fines and other remedial measures



Downgrade of Customs Compliance Level and Affecting Authorized Economic Operator (AEO) Status



Recall the issued C/O and notify the importing country

Scenario 1

Incorrect declaration of Vietnam origin on export CD

- The fine range for each violation is **USD 125 ~ USD 300**

Scenario 2

Providing incorrect data/documents to the issuing agency when applying for C/O

- The fine range for each violation is **USD 833**
- **~ USD 1,250**
- Seizure of Violating Items

Scenario 3

Counterfeiting Origin

- The fines for violations range from **USD 417 to USD 4,167.**
- Seizure of the offending goods; or
- Remedial measures to recover an amount equivalent to the price of the goods.

Sungshin's PCA support



PCA Preparation

- You must know your company's current customs compliance rating (since the last PCA was performed).
- Ensure that the Internal Compliance Process (“ICP”) for routine import and export activities is regularly maintained and improved.
- Conduct customs pre-checks and review compliance to identify any non-compliance with customs regulations.
- Take immediate corrective action to address noncompliance prior to a PCA decision.



Before PCA

- Review the PCA decision to determine audit focus/scope and audit period.
- Consider the audit schedule proposed by the customs authorities, but request a postponement of the audit if possible.
- Determine in advance who will be responsible for providing requested information to the PCA team and responding to it.
- Consider whether external expert assistance is needed, taking into account the company's circumstances.



During PCA

- Before sending the requested materials to the PCA team, you must carefully review and prepare the data/documents/evidence/explanation.
- Manage communication and data access with the PCA team.
- The PCA team's expectations regarding the response must be managed.
- Be sure to carefully review the “**Customs Audit Working Minutes**” prepared by the PCA team and suggest corrections if any of the information provided is inaccurate.



After PCA

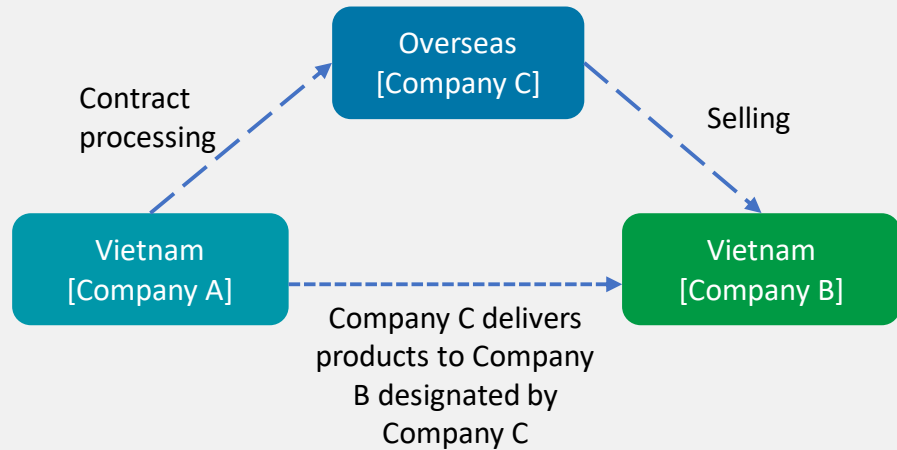
- Be sure to review and confirm the regulatory basis stated in the “**Customs Audit Conclusion**” prepared by the PCA team, and request corrections or file an objection if not stated.
- **If you agree to the “Customs Investigation Decision**”, you must pay the customs duty and related late payment interest and penalties.
- **If you do not agree with the “Customs Audit Decision**”, provide additional explanation or follow the appeal procedure.

Updates on domestic export and import transaction regulations

Proposals for changes to relevant regulations by the Ministry of Finance (MOF) and General Directorate of Customs (GDC)

- According to Clause 1, Article 35 of the Decree No. 08/2015/ND-CP, there are three types of transactions suitable for domestic import and export procedures.
- The Ministry of Finance is evaluating and making consistent suggestions to the Government on the introduction of regulations related to domestic import and export activities after the General Department of Customs proposed changes to relevant regulations.

Transaction Type 1 (Point A, 1 trillion):

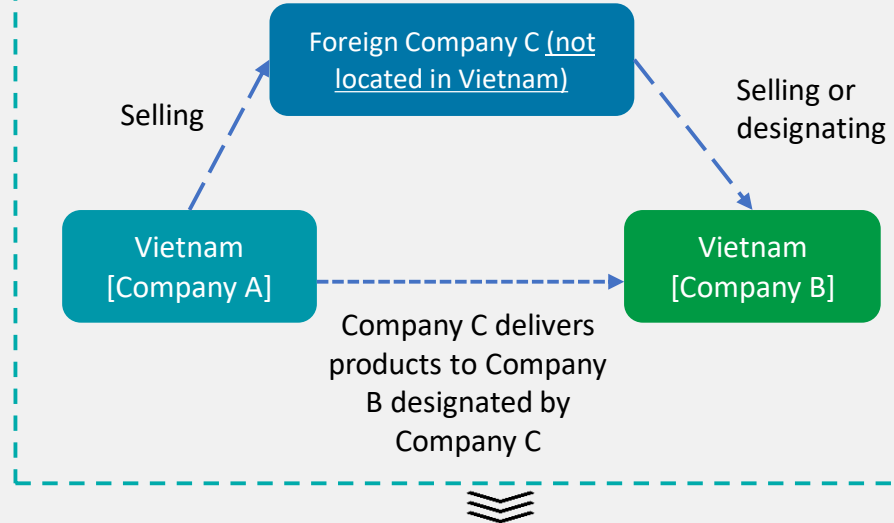


Transaction Type 2 (Point b, 1 trillion):



Continued to be maintained in accordance with the provisions of the Implementing Regulations No. 38/2015/TT-BTC and related regulations

Transaction Type 3 (Point C, 1 trillion):



Pursuant to Article 3, Paragraph 2 of the Enforcement Decree No. 90/2007/ND-CP:

Foreign traders not located in Vietnam are those who **have not directly invested in Vietnam** in the form prescribed by the Investment Law and the Trade Law, and **have not a representative office or branch office in Vietnam** according to the Trade Law.



Transaction Type 3 is eliminated according to the proposals of the Ministry of Finance (MOF) and GDC.

Alternative to Transaction Type 3:

- (1) In the case of goods purchased (acquired) from a domestic company: **It is processed as a sales transaction between two domestic companies**, and a tax invoice is **issued and value-added tax** is paid for the domestic transaction
- (2) Import and export procedures are carried out **through bonded warehouses** or by Vietnamese parties in separate customs zones
- (3) For Vietnamese entities dealing with foreign traders not located in Vietnam: Consider obtaining **EPE qualification**
- (4) Others: Considered as a **domestic sales transaction, tax obligations are fulfilled**

5. TRANSFER PRICING

- *Transfer Pricing Audit Trends and General Issues*
- *Transfer Pricing Risk Management*



TP Audit Trends and General Issues

General Issues

Failure to comply with the requirements for preparing and submitting Transfer Pricing (“TP”) reports

- Failure to submit TP reports or late submission
- Failure or insufficient reporting of information in Appendix I requirements for timing of data extraction for benchmarking studies
- Non-compliance

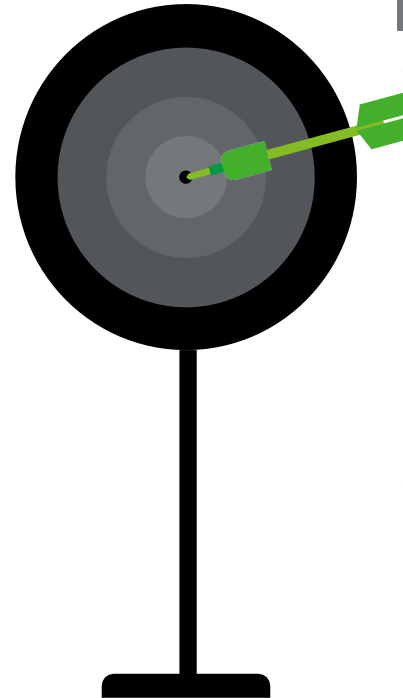
Benchmarking study

- **Selection criteria:**
 - ✓ Business size
 - ✓ Sales and administrative expenses ratio to gross profit
 - ✓ No R&D expenses
 - ✓ Exclusion of some comparable companies due to reasons related to independence, quantitative factors, qualitative factors, and regional criteria
- **Accuracy and reliability of the database:**
 - ✓ Requirements for supporting documentation to support the financial results of selected comparable companies

Previous pricing methods and profit level indicators

- Challenge for the selected TP analysis method (priority application of method using internal data source)
- Comparison of overall company profit rate or price/profit rate by transaction

Transaction-by-transaction analysis



- **Services within the group:**
 - ✓ Authenticity: Context of the transaction (factors that trigger demand for the service, actual occurrence)
 - ✓ Necessity: Economic value of the service; capability of the service provider
 - ✓ Analysis of reasonableness of price: Compliance with fair trade principles
 - ✓ Completeness of supporting documents for the above test
- **Royalty**
 - ✓ Performance of functions of DEMPE (Development, Enhancement, Maintenance, Protection, Exploitation) performed by both parties
 - ✓ Compliance with fair price transaction principles for royalty rates
 - ✓ Technology transfer: Consideration of validity of contract
 - ✓ Ownership of transferred technology

TP trends and common challenges

Summary of the Tax Authority's Approach to Transfer Pricing Tax Audits

Transfer pricing documentation is lacking



Calculating profit margins using the tax authority's database

- ✓ Local files are properly prepared
- ✓ Loss occurs, but profits are adjusted to within the profit rate range



- ✓ Disregard the adjusted profit amount
- ✓ Adjust the results upward based on the loss amount before adjustment

- ✓ Local file properly equipped
- ✓ Low profit margin within profit range



- ✓ Comparable Business DisregardUse the IRS database to create a "new" profit range higher than the taxpayer's data

- ✓ Prepare local files appropriately
- ✓ High profit margins within the profit range



- ✓ Review of special transactions (e.g. royalties, interest, trademarks, etc.)
- ✓ Considering such expenses as non-deductible expenses

Transfer pricing risk management



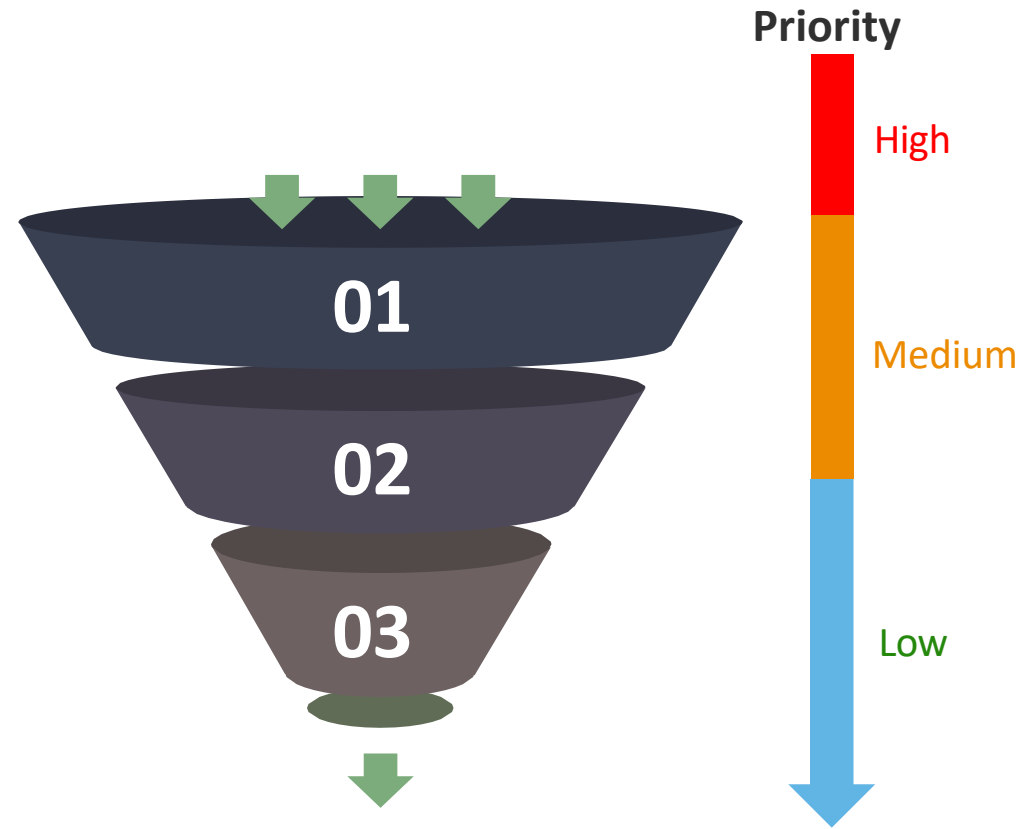
Current practices of the tax

- Develop expertise in prior pricing
- Access commercial databases to search for comparables
- Actually adopt new TP audit strategies and approaches

Taxpayer Response

- Consideration of potential TP risk mitigation or APA through a general 3-step approach

- ✓ Meets requirements for TP documentation
- ✓ **Re-review and revise the benchmarking study** in accordance with the latest practices of the tax authorities
- ✓ Review of certain transactions under the new approach of the tax authorities



Sungshin Advisory



Published articles and interviews

Korean investment in Vietnam

“Investors, especially foreign investors, pay more attention to financial factors such as trade trends, earnings quality, debt, net debt and equivalents, cash flow of the company; other factors such as operating, legal and post-transaction standardization



Ông Son Won-sik, Giám đốc Nhóm Khách hàng Hàn Quốc Deloitte Việt Nam.



Global Minimum Tax



Ông Son Won Sik, đại diện Kocham - Việt Nam cần tích cực đưa ra các ưu đãi mới giúp tăng tính hấp dẫn đầu tư.

Để giành thế chủ động
 Những bước đi chủ động gần đây của Malaysia và Singapore trong việc dự kiến áp dụng Thuế tối thiểu toàn cầu với cơ chế Thuế tối thiểu nội địa đạt tiêu chuẩn (QDMTT - Qualified Domestic Minimum Taxation) là một tín hiệu đáng chú ý.

“The introduction of new regulations on the global minimum tax may affect the efficiency of attracting foreign investment. Vietnam is actively providing new incentives to increase investment attractiveness.”



Professional experience

- As a Korean accountant, I have worked at Samjong KPMG for 11 years (including 2 years of secondment in Slovakia)
- Working at Deloitte Vietnam for 7 years, providing accounting, tax consulting, corporate establishment, and M&A support to leading Korean conglomerates and mid-sized companies located in Vietnam



Collaboration with public institutions and business associations

- Kocham Operating Committee (Corporate Growth Support Center)
- Tax advisory at the Korean Embassy in Vietnam
- Awarded a plaque of appreciation from the National Tax Service for its outstanding support of Korean companies in Vietnam
- Auditor of the Korea Energy Association in Vietnam
- Vietnam Ministry of Finance Protocol Editorial Board
- Information and Communication Promotion Agency - Global ICT Vietnam Consulting Expert



Korea Trade-Investment Promotion Agency



Activities at seminars hosted by Vietnamese government agencies



Tại hội nghị, đại diện của các DN, hiệp hội DN đều đánh giá cao những nỗ lực đơn giản hóa thủ tục hành chính, tạo thuận lợi cho DN của Tổng cục Thuế và Tổng cục Hải quan trong suốt thời gian qua. Song không ít DN Hàn Quốc vẫn gặp phải những vướng mắc trong quá trình kinh doanh tại Việt Nam.



Đại diện Phòng Thương mại và Công nghiệp Hàn Quốc cho biết, nhiều công ty bị truy vấn đối với các trường hợp phát sinh số giờ làm thêm vượt quá 900 giờ/năm.





Q&A