



## **Customs Alert**

Vietnam Customs and Global Trade Alert - A fresh perspective

*Draft Circular amending and supplementing Circular No. 38/2015/TT-BTC*

January 31<sup>st</sup>, 2018

## **NOTABLE CHANGES IN THE LATEST DRAFT CIRCULAR AMENDING, SUPPLEMENTING CIRCULAR NO. 38/2015/TT-BTC**

Current customs legislation governing customs procedures; customs supervision and inspection; application of import and export taxes; and tax administration applied to exported and imported goods, is currently under substantive review. This review is driven by Vietnam Government's recognition that the customs environment needs to be improved if the country is to continue to attract foreign direct investment and to build a strong production base within ASEAN.

Discussions are still ongoing within the General Department of Customs (GDC) and with the Ministry of Finance (MoF) on the extent, and timing, of the changes that will be made, but the latest Draft Circular amending and supplementing Circular No. 38/2015/TT-BTC shows their current thinking. The envisioned changes are significant and the key points from the Draft Circular are summarized as follows:

### **ADDITIONAL DECLARATION**

It is recognized that the existing Article 20, Circular No. 38/2015/TT-BTC is unclear on procedures to be adopted, or declarations to be made, in a number of common circumstances faced by importers/exporters. The Draft Circular provides more clarity, now stipulating:

- ✓ Details that will not be allowed to be amended post clearance, e.g. quantity, type, and number of goods lines;
- ✓ Procedures for amending a declaration of quantity in cases of importing/exporting whole lot/ship, and agreement on quantity tolerance and commercial level of goods;
- ✓ Procedures for amendment declaration in case of excessive goods or wrong delivery of goods;
- ✓ Procedures for additional post clearance declaration in case of goods shortage but not yet completely out of the customs-controlled area.

### **INSPECTION OF CUSTOMS VALUE AT CLEARANCE STAGE**

The Draft Circular clarifies what occurrences/instances will drive rejection or challenge by the Customs authorities to the customs value of goods declared at the border point:

- ✓ The declared value could be rejected upon clearance, where there is lack/misdeclaration related to customs valuation on the customs declarations; inconsistencies in valuation-related information on documents provided; the valuation method was incorrectly applied. Where values are challenged, the enterprise has 5 days to provide additional declaration. If not, the Customs authorities will impose a customs value based upon their databases.
- ✓ Where the Customs authorities suspect the declared value of imported/exported goods or is incorrect i.e where the declared value compared to the Customs databases of values, is lower than their comparable value, or 20% higher than their highest recorded value:
  - (i) Where particular goods are on Customs' valuation risk list; the values declared are determined by the GDC to be abnormally low, and the goods are imported or exported by companies with a record of non-compliance then: declarants will need to provide supplementary documents or information and explanation to the

Customs authorities, to protect the declared value, or risk a higher value being imposed by the Customs authorities before the goods can be cleared.

- (ii) If declared value is 20% higher than the highest value recorded on Customs databases, then the goods will be cleared, but the Customs authorities will refer the values declared to the Tax authorities for them to investigate the related party transaction value.
- (iii) Other cases: declarants will be subject to a customs consultation.

## **TAX EXEMPTIONS**

Import/export goods as stipulated under Article 5 to Article 29 regulated in Decree No.134/2016/ND-CP are exempted from duty upon clearance. The Draft Circular details the formula to be adopted by enterprises in 9 situations. Most notably:

- ✓ For determining the exempted amount where materials are imported for use in export processing or export manufacturing;
- ✓ For recovery of customs duties paid on imported materials that were used in processing/manufacturing for export;
- ✓ For determining customs duty liabilities on materials imported for processing, manufacturing, but not exported e.g. defective and disposed of domestically;
- ✓ Duty exemption for fixed assets application (conditions/criteria) for encouraged projects with VND 6,000 billion invested capital, and rural investment project with 500 employees or more.

## **NORMS FOR PROCESSING, MANUFACTURING FOR EXPORT AND WASTAGE**

In our November 2017 Customs & Global Trade Alert, we reported on potential changes in the reporting of technical Bills of Materials ("BOM") and Actual BOM, by those enterprises processing or manufacturing for export. This latest Draft Circular provides clearer implementation instructions, including:

- ✓ Further guidance on the formula to calculate actual production norms, definitions, and determination of wastage, scraps, and defective products;
- ✓ Regulating that the purpose of actual production norms is for the determination of tax payable (i.e. upon change of purpose to domestic sale) or where, during customs audit or inspection, materials consumption cannot be satisfactorily accounted for;
- ✓ Enterprises obligation to notify the Customs authorities, in writing, of any materials they are unable to build into the registered production norms prior to importation.

## **WHAT THIS MEANS TO YOU**

Whilst the Draft Circular provides more opportunity for declarants to change information declared, there would have been greater benefit to enterprises had the changes been extended to cover quantity, type, and number of goods lines.

In terms of customs value, our assessment is that if the Draft Circular takes effect, it will give the Customs authorities more basis to reject declared values. This will undoubtedly

lead to more frequent challenges at the border point, delays in import clearance, and potentially higher border charges if the importer cannot satisfy the Customs authorities the declared values are acceptable.

The proposed revisions on tax exemptions, and the additional guidance on the practical application of processing/manufacturing export schemes, certainly provide greater clarity of treatment. However, if the measures are adopted this will likely require substantive changes to internal control and management systems in order for enterprises to comply.

## WHAT TO DO

In term of customs valuation, besides ensuring that all declared information in the CDs is fulfilled correctly and consistently, enterprises should prepare proper supporting documents and arguments to protect its transaction value method.

The change in inventory management requires you to control the internal system, business, and production circle more effectively beside ensuring the accuracy and consistency of the documents for the purpose of reporting.

## HOW WE CAN SUPPORT

Deloitte Vietnam's Customs specialists can provide practical and hands-on support, in the following areas:

- ✓ Advising on how proposed changes to the existing Customs legislation could impact your specific business model;
- ✓ Supporting in making representation to the GDC or the MoF on further changes to customs legislation to facilitate your business model;
- ✓ Advising on alternative business models and the customs and tax implications for each option under consideration;
- ✓ Reviewing customs valuation to identify any issue and protect declared value and method; advice on actions to mitigate value imposition risk, and preparation of customs audit regarding valuation issues;
- ✓ Assessing whether your existing processes and procedures are sufficient to take advantage of available duty exemption, or will meet any additional reporting requirements;
- ✓ Conducting compliance review to test the accuracy, completeness, and consistency of related data and where gaps are identified to provide recommendation of remedial actions; and
- ✓ Assisting to prepare finalization reports in accordance with new regulations.

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Should you have any questions regarding the aforementioned regulations, feel free to contact us.

## Contacts

**Thomas McClelland**

**Tax Leader**

+84 28 3910 0751

tmcclelland@deloitte.com

**Dinh Mai Hanh**

**Tax Partner**

+84 24 6268 3568

handinh@deloitte.com

**Suresh G Kumar**

**Tax Partner**

+84 28 3910 0751

ksuresh@deloitte.com

**Bui Ngoc Tuan**

**Tax Partner**

+84 24 6268 3568

tbui@deloitte.com

**Dion Thai Phuong**

**Tax Partner**

+84 28 3910 0751

dthai@deloitte.com

**Bob Fletcher**

**Tax Director**

+84 28 3910 0751

fletcherbob@deloitte.com

**Bui Tuan Minh**

**Tax Partner**

+84 24 6268 3568

mbui@deloitte.com

**Phan Vu Hoang**

**Tax Partner**

+84 28 3910 0751

hoangphan@deloitte.com

Website: [www.deloitte.com/vn](http://www.deloitte.com/vn)

Email: [deloittevietnam@deloitte.com](mailto:deloittevietnam@deloitte.com)

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