
TAX BULLETIN July 2023

1. Proposal on the amendment of Article 35, Decree No. 08/2015/ND-CP on on-the-spot import and export activities by the General Department of Customs

The General Department of Customs (“GDC”) has sent the Official Letter No. 2587/TCHQ-GSQL and Official Letter No. 2588/TCHQ-GSQL dated 29th May 2023 to seek for opinions on the amendment and supplementation to Article 35 of the Decree No. 08/2015/ND-CP in relation to the on-the-spot import and export regulations. According to Article 35, Decree No. 08/2015/ND-CP, on-the-spot import and export activities shall include:

- (i) Goods produced in Vietnam under contract manufacturing arrangements and sold to Vietnamese organizations or individuals by overseas ones;
- (ii) Goods traded under the sale or purchase contract between Vietnamese enterprises and overseas organizations or individuals that have no representative in Vietnam, and delivered or received under the designation arrangement between foreign merchants with other enterprises in Vietnam.

The GDC proposes, in those Official Letters, to entirely abolish the current regulations on on-the-spot import and export transactions in Article 35 of Decree 08/2015/ND-CP. Upon GDC’s proposal, GDT and its provincial tax departments shall take responsibility for managing and collecting taxes in the following common cases of on the spot import and export as follows:

- For goods that are processed by Vietnamese entity for foreign traders but sold by foreign traders to organizations or individuals in Vietnam: the processor must change the using purpose for the processed goods, pay corresponding taxes as applied for imported goods from overseas.
- For goods that are manufactured by Vietnamese entity from import duty exempted materials for export to overseas organizations or individuals and designated to be delivered to another Vietnamese entity: the export manufacturing entity must change the using purpose of import duty exempted materials and pay for corresponding taxes, if any.
- For goods that are traded between a domestic enterprise and a foreign trader without presence in Vietnam and designated to be delivered in Vietnam: an agency contracts should be signed or VAT invoices should be used by the foreign trader and the designated goods receiver, for tax obligations fulfilment purpose.

This proposal, if being approved, will likely have a significant impact to the operations of companies engaging in on-the-spot import and export activities, especially those companies which conduct product processing for foreign partners. Apart from customs procedures, other major issues may arise such as import tax exemption, reduction and refund for imported materials or VAT policy applied to goods sold to foreign traders but delivered in Viet Nam.

2. VAT rate applicable to goods sold to a foreign client under the Ex works term (Official letter No. 10459/CTBDU-TTHT dated 14th June 2023 of Binh Duong Tax Department)

In case where Company sells goods to a foreign client under the Ex works term, the Company is responsible for delivery of goods at a place provided for by the contract which is Company's warehouse and the purchaser is responsible for clearing the customs procedure for exported goods. Therefore, if the customs declaration form of exported goods is not available, the condition for applying VAT zero rate to exported goods is not met.

3. Income of non-resident individuals if not related to the work performed in Vietnam is exempt from PIT (Official Letter No. 40818/CTHN-TTHT dated 12th June 2023 of Hanoi Tax Department)

The calculation of PIT incurred by a foreign expat working in Vietnam shall depend on his/her residence status.

- If the foreign expat meets the conditions of being resident, incomes liable to PIT are global incomes (incomes earned in Vietnam and outside Vietnam), regardless of places where the incomes are paid according to the guidelines.
- If the foreign expat fails to meet the conditions of being resident in Vietnam, he/she shall be determined a non-resident in Vietnam and shall be only liable to PIT regarding its Vietnam sourced incomes. If the paid incomes are not related to tasks performed in Vietnam, they shall not be included taxable incomes in Vietnam.

4. Guidance on processing tax exemption application dossier under the DTA (Official letter No. 2652/TCT-HTQT dated 28th June 2023 of the General Department of Taxation)

At the request of the Hanoi Tax Department, the General Department of Taxation provide guidance on the determination of the ratio of immovable property to total assets when processing tax exemption application dossier under the Agreement on the avoidance of double taxation ("DTA") regarding capital gains as follows:

Total assets sheet reflects the total value of the enterprise's assets at a point in time. Total assets sheet is a part of a balance sheet, the value of total assets is equal to the value of resources (including equity and liabilities). The tax office may use the audited balance sheet to determine the value of immovable property and total assets of the enterprise when processing the tax exemption application dossier under the DTA.