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## TAX BULLETIN September 2023

### 1. The Ministry of Finance proposed amendments to Article 35, Decree No. 08/2015/ND-CP on on-the-spot export and export procedures

On 25 August 2023, the Ministry of Finance (MOF) submitted proposals to the Government Office to abolish on the spot export and import procedures stipulated in Article 35 of Decree 08/2015/NĐ-CP. At the same time, MOF also proposed solutions for where such procedures can no longer be implemented. We have summarised proposals by the MOF as below:

- Abolish Article 35 of Decree No. 08/2015/ND-CP dated 21st January 2015 of the Government; however, during a 1-year transition period from the effective date of the new Decree, tripartite transactions with the involvement of foreign traders that have no presence in Vietnam can continue to apply on the spot export and import procedures.  
*“Abolish Article 35 of Decree no. 08/2015/ND-CP dated 21 Jan 2015 of the Government Sales and purchase transactions between Vietnamese enterprises and overseas organizations or individuals that have no presence in Vietnam, where goods are instructed to be directly delivered to/received from another enterprise in Vietnam, will continue to implement in-country export and import customs procedures for a maximum period of 01 year from the effective date of this Decree and must meet the conditions that foreign traders have no presence in Vietnam as prescribed in Clause 5, Article 3 of the Law Foreign trade management.”*
- On the spot export and import procedures can still be used for toll manufacturing activities and sales/purchase transactions between domestic enterprises and export processing enterprises. MoF will provide guidance on relevant customs procedures in these cases.
- MOF proposes certain solutions where on the spot export and import procedures are no longer permitted:
  - For goods purchased from domestic market: the transaction would be conducted as sales transaction between two domestic enterprises, paying tax according to regulations as domestic transactions.
  - For goods manufactured from duty exemption imported materials for export manufacturing, the sales transaction with designation of goods delivered within Vietnam by a foreign trader without a presence in Vietnam: import-export procedures through bonded warehouses or separated customs areas could be conducted by the Vietnamese parties, and tax policies applicable to the corresponding customs procedures should be followed.
  - Vietnam entities having transactions with a foreign trader without a presence in Vietnam: consideration could be given to obtaining Export Processing Enterprise status.
  - If none of the proposed policies can be adopted, and the enterprise has a sale transaction with the designation of goods delivered within Vietnam by a foreign trader,

the transaction would be treated as a domestic sales transaction. Imported materials for export manufacturing under a tax-free scheme would be required to declare a change in the using purpose and fulfill tax obligations. When conducting domestic transactions, taxes are paid in accordance with regulations.

**2. Invoicing for goods sold to foreign traders with a presence in Vietnam (Official letter No. 18140/CTBDU-TTHT dated 7<sup>th</sup> August 2023 of Binh Duong Tax Department)**

In case where the Company sells goods to foreign traders with a presence in Vietnam (having a representative office in Vietnam), this transaction is not considered as on-the-spot export and import as provided for in the Clause 1, Article 86, Circular No. 38/2015/TT-BTC dated 25<sup>th</sup> March 2015 of Ministry of Finance. Contents inscribed on invoices are required to comply with guideline in the Point d, Clause 6, Article 10, Decree No. 123/2020/NĐ -CP dated 19<sup>th</sup> October 2020 of Government.

**3. Tax treatment of warranty activities (Official letter no 19368/CTBDU-TTHT dated 11<sup>th</sup> August 2023 of Binh Duong Tax Department)**

In case where a Company provides free-of-charge guarantee to clients under a warranty commitment in accordance with warranty time and conditions as provided for in warranty card sent to the clients along together with sale invoice or inscribed on sale invoice in accordance with legal provisions:

- If the warranty service is provided by replacing spare parts/components of goods sold to the clients, the Delivery Bill attached with goods sale contract, warranty card, and Minutes of receiving spare parts/components signed by both seller and purchaser as evidence for the Company to record deductible expenses. The following information are required to be shown in the warranty card: name and address of warranty card holder, the warranty for goods in the invoice with number..., serial number...and date of issuance...
- If the Company provides guarantee to clients with fee, the Company will have to issue invoice, calculate, file and pay tax in accordance with legal provisions.

**4. Tax treatment of deposit for leasing land incurred before the establishment of an enterprise (Official letter No. 20011/CTBDU-TTHT dated 23<sup>rd</sup> August 2023 of Binh Duong Tax Department)**

- When being granted investment license, if the foreign investor opened an investment capital account at a qualified commercial bank to make payments for legal expenses incurred in the process of pre-investment in Vietnam in accordance with provisions on foreign currency management applicable to foreign direct investment in Vietnam, the deposit for leasing land transferred from such investment capital account by the foreign investor will be considered as legal contributed capital of the foreign investor in the Company.

- In case where the foreign investor directly transfers the deposit for leasing land from overseas to an account of land lessor instead of through an investment capital account opened at a qualified commercial bank, such a payment transaction of the deposit will be improper according to legal provisions; therefore, the deposit will be not considered as legal contributed capital of the foreign investor in the Company.