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TAX ALERT

Guidance of the Customs authority regarding in-land import-export activities with the participation of foreign partners

August 2023



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After the proposal on 29 May 2023 regarding the amendment to **current regulations on in-land import-export activities** under Article 35, Decree No. 08/2015/ND-CP (“Decree 08”) (kindly refer to Deloitte’s tax alert about this proposal [here](#)), the General Department of Customs (“GDC”) and local Customs Departments/Sub-departments (collectively “the Customs authorities”) have implemented stricter supervision and management on in-land import-export activities, especially for those where counter parties are foreign parties as prescribed at point c, clause 1, Article 35 of Decree 08.

In response to requests for guidance from enterprises to clarify the implementation of point c, clause 1, Article 35 of Decree 08, it is the Customs authorities guidance that, the in-land import-export transactions which involve foreign partners already having presence in Vietnam, are not in accordance with the current regulations (*Official Letter No.522/GSQL-GSQL of Ho Chi Minh City Customs Department, Official Letter No.1219/HQLA-NV of Long An Province Customs Department, Official Letter No. 3987/TCHQ-GSQL of the General Department of Customs, etc.*).

The Customs authorities also state that the concept of “foreign trader having no presence in Vietnam” is defined under the provisions of clause 5, Article 3 of the Law on Foreign Trade Management 2017, clause 2, Article 3 of Decree No. 90/2007/ND-CP and clause 1, Article 3 of the Commercial Law No. 36/2005/QH11, as follows:

“A foreign trader is considered to have no presence in Vietnam if the foreign trader does not make investment and business activities in Vietnam in accordance with the laws on investment, commerce and enterprises; and do not have representative office or branch in Vietnam in accordance with the laws on investment, and enterprises.”

Deloitte’s recommendations for the business community

- Review the applied in-land import-export transactions on comprehensive basis, especially for transactions involving foreign partners;
- Restructure the transaction models to comply with the current regulations, where necessary;
- Consult Customs authorities for written guidance on specific transactions for implementation and potential risks mitigation.

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