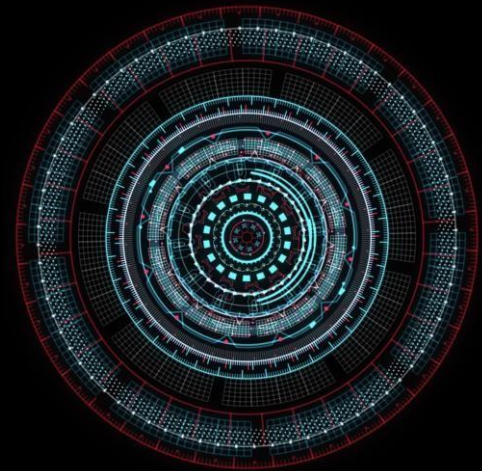


ALERT ON TRADE AND CUSTOMS

Draft Circular to amend and supplement Circular No. 38/2015/TT-BTC, and replace Circular No. 39/2018/TT-BTC on customs procedures

September 2021



General information

- Over the past 5 years, **Circular No. 38/2015/TT-BTC** and **Circular No. 39/2018/TT-BTC** of the Ministry of Finance (“MOF”) have been the principal documents guiding on customs procedures for export-import activities of businesses in Vietnam.
- The MOF is currently considering, a **revised Draft Circular** which, if adopted, would amend Circular No. 38/2015/TT-BTC and replace Circular 39/2018/TT-BTC
- In this Alert, we have summarized the key articles of the latest Draft Circular, and the potential impact on business.

() Note: the summary included in the Alert are our evaluation of the current Draft Circular, and therefore might not include all amended and supplemented regulations, and subject to change when the Final Circular is issued.*

The main contents of the Draft Circular



Amended and supplemented regulations for Export Processing Enterprise (“EPE”)

- Reporting obligations
- Liquidation of goods (including M&E, vehicles, materials, etc.) in Vietnam
- Goods of EPEs destroyed due to objective reasons



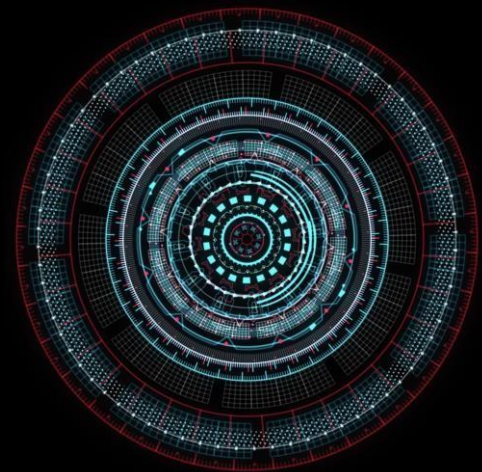
Other notable changes

- Customs valuation
- Production Bill of materials (“BOM”)
- Procedures for in-land export and import
- Notification of processing facility under a processing contract

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Notable amendments and supplementations to regulations on EPE


KEY CHANGES IN REGULATIONS

- 

Reporting obligations: EPEs are required to fully report **all goods that are not subject to import taxes, within 90 days** from the fiscal year end
- 


Supplement procedures to handle goods when converting from an EPE to a non-EPE.
- 


Liquidation of goods in Vietnam: No more option of changing purpose before selling, only in-land transactions are allowed, and the receiver/buyer shall declare customs and pay all related taxes (EPEs, being the exporter, will pay nothing).
- 


Waiver of import charges on destroyed goods **will only be granted** if evidenced by insurance policies or approval by competent authorities
- 

Off-side warehouses of EPEs: must satisfy **same conditions** as the EPEs and subject to **monthly reporting.**

IMPACTS ON BUSINESS

- 

Entities will need to ensure that appropriate information is captured and reported timely
- 

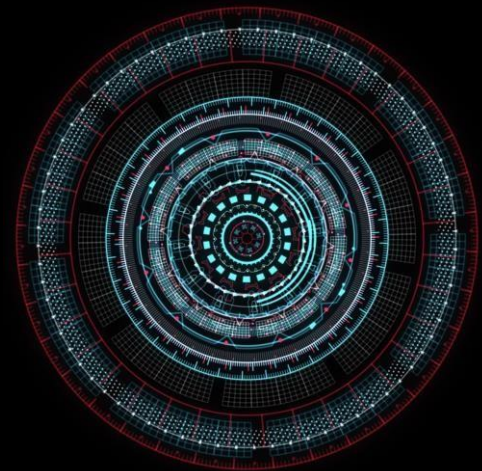
The supplemented regulations and guidance, should provide greater transparency/certainty of treatment and facilitate EPE's business operations
- 

Entities would need **consider the impact any revision** to the regulations may have, when converting from EPE to non-EPE and vice versa

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Other critical changes

KEY CHANGES IN REGULATIONS



Customs valuation: When there is high risk of transactions with related parties, the customs authorities shall examine, conduct clearance, and transfer to relevant tax authority for transfer pricing review.



Bill of materials (BOM):

- The **new terms** “actual used production norms/BOM” and “planned production norms/BOM” are introduced.
- Authorized Economic Operators (“AEOs”) are **exempted from submission of actual used BOM** in customs finalization report (“CFR”).



In-land export-import procedures:

- The in-land exporter must **notify local customs of in-land import declaration** within 15 days from export declaration.
- **Reduced procedures** for companies with **high compliance ratings**, and their partners.



The obligation to **notify processing contracts** is provided in details.

Deadline: 10th day of the next month, rather than 3rd day as in previous regulations.

IMPACTS ON BUSINESS



Increased focus on **transactions between related parties** by both customs authorities and tax authorities which is likely to result in increased challenges and compliance costs. More consideration will need to be given to the customs implications of transfer pricing studies and analysis.



- **Clearer regulations** on BOM,
- AEOs might need to ensure that **required information is captured and increase the accuracy of CFRs**, to manage exposure to fines and penalties.

The above are applied to both EPEs and non-EPEs.



- **Additional requirements for in-land exporters** to complete an in-land import-export transaction.
- **Reduced burden** for companies with **high customs compliance rating**.



Greater clarity on reporting requirements and easing of the reporting timeline

How Deloitte can support

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

Assist in submitting comments/opinions to adjust the Draft Circular, or related regulations

Support in comprehending and applying the Draft Circular or current regulations for compliance purpose

Advise on issues encountered by businesses when applying new regulations

Assess and advise on the conversion from EPE to non-EPE and vice-versa

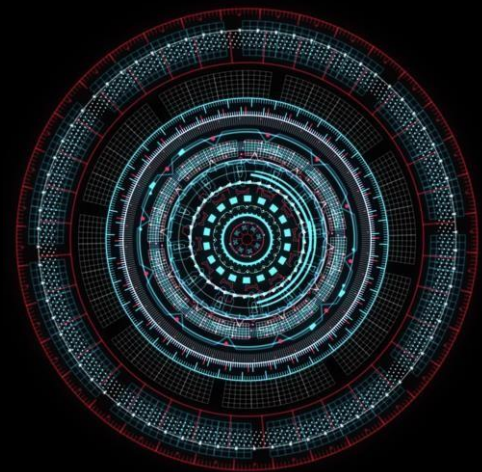
Review the Compliance status of the Company from Customs perspective

Advise on customs valuation of goods and cross-border transactions with related parties and minimize compliance time and costs with customs and tax authorities

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