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VIETNAM

TAX & CUSTOMS NEWSLETTER

April 2021

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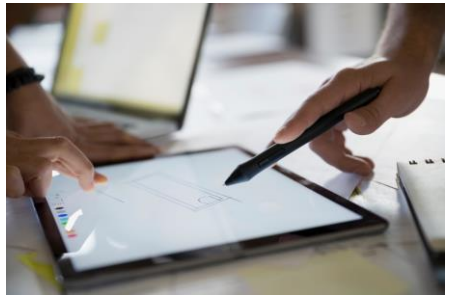
Tax Administration



NEW REGULATIONS

Extension of payment deadline for Value Added Tax ("VAT"), Corporate Income Tax ("CIT"), Personal Income Tax ("PIT") and land lease fee in 2021.

On 19 April 2021, the Government issued the Decree No. 52/2021/ND-CP on extension of payment deadline for VAT, CIT, PIT and land lease fee in 2021, with notable following contents:

- Eligible subjects include enterprises, organizations, business households, and individuals engaged in business activities in a number of economic sectors (with additional sectors from those regulated Decree No. 41/2020/ND-CP); micro and small business; credit institutions, foreign bank branches.
- Payment entitled to deadline extension include:
  - VAT (excluding VAT upon import) of first 08 month and 06 month of 2021, for monthly and quarterly filing respectively
  - Provisional CIT for Quarter I and II of 2021
  - VAT, PIT of business households and individuals: no later than 31 December 2021
  - Land lease fee for the first period of 2021
- Eligible taxpayers must submit a one-time deferral request for all tax periods of the eligible tax(es) upon tax filing, no later than 30 July 2021.

(Decree No. 52/2021/ND-CP dated 19 April 2021 of the Government. For details, please refer to Deloitte's Tax Alert issued on 23 April 2021)

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Corporate Income Tax

NEW REGULATIONS

Sponsor and donation expenses on prevention of the Covid-19 pandemic

On 31 March 2021, the Government issued Decree No. 44/2021/ND-CP ("Decree 44") guiding the deductibility of sponsor and donation expenses for the Covid-19 pandemic prevention and control activities.

Sponsor and donation expenses for Covid-19 pandemic prevention and control activities, in cash or in kind, shall be deductible if meeting these conditions:

- Sponsor and donation expenses directly used for Covid-19 pandemic prevention and control activities in Vietnam;
- Sponsor and donation conducted via organizations as regulated at Clause 2, Article 2, Decree 44;
- Having sufficient supporting documents, including: Sponsor and donation minutes in the form regulated by Decree 44 or documents (paper/electronic) confirming the sponsor and donation with the signatures, stamps of representatives of enterprises and representatives of receiving party; enclosing legitimate invoices and evidence of these expenses.

This Decree takes effect from the signing date and applies for the tax periods of year 2020 and 2021.

(Decree No. 44/2021 ND-CP dated 31 March 2021 issued by the Government)

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Corporate Income Tax

GUIDANCE RULINGS

CIT and PIT treatment on expenses of voluntary health insurance for employees

In case the company incurs expenses of voluntary health insurance without accumulated insurance premiums for its employees:

- CIT treatment: Expenses of voluntary health insurance for employees are considered as the employees' welfare. If the total welfare expenses do not exceed the practical average 01 month salary in the tax year and meet conditions according to Article 4, Circular No. 96/2015/TT-BTC, these expenses shall be deductible for CIT purpose.
- PIT treatment: Voluntary health insurance without accumulated insurance premiums shall be non-taxable income of the employees.

(Official Letter No. 7431/CTHN-TTHT dated 12 March 2021 issued by Hanoi Tax Department)

CIT for capital transfer activity between two foreign investors

When the capital transferor and transferee are both foreign investors and not operating under the Law on Investment, the Law on Enterprise in Vietnam; the enterprise established under Vietnamese laws and whose capital transferred between the two foreign investors are responsible for declaring and paying the CIT payable on behalf of the foreign organization in accordance with regulations.

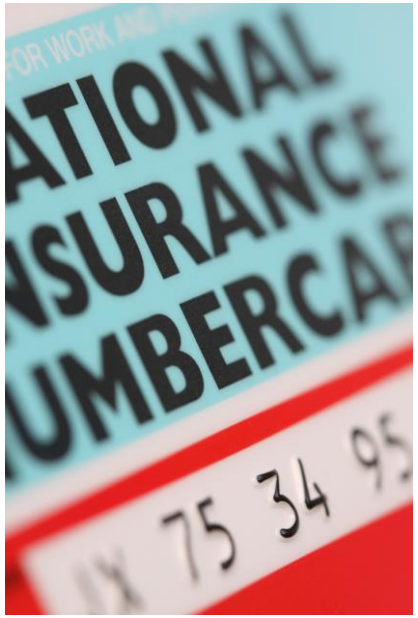
Regarding capital transfer price, if it does not comply with the arm's length principle, the local Tax authorities reserve the right to deem taxable price according to the tax regulations; upon reviewing the CIT declaration dossier for capital transfer, the company's financial statements up to the date of capital transfer, reference to similar cases of capital transfer and the actual situation of capital transfer at the company.

(Official Letter No. 615/TCT-CS dated 11 March 2021 issued by the General Department of Taxation)

Application of 30% CIT reduction for enterprises with consolidated financial statements

The revenue criteria to determine applicable object for CIT reduction under the Resolution No. 116/2020/QH14 and Decree No. 114/2020/ND-CP for enterprise will include its branch's revenue as presented on the consolidated financial statements for 2020.

(Official Letter No. 967/TCT-CS dated 05 April 2021 issued by the General Department of Taxation)



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Personal Income Tax

GUIDANCE RULINGS

Gift in kind for employees

Gifts in-kind to employees, which do not fall into category under Point 10, Article 2, Circular No. 111/2013/TT-BTC, will not be considered as taxable income from gift for PIT purpose. However, the ruling remains silent on whether this income is subject to taxation on employment income.

(Official Letter No. 10145/CTHN-TTHT dated 05 April 2021 issued by Hanoi Tax Department)

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Value Added Tax

GUIDANCE RULINGS

Support fee is subject to VAT if the nature is service charge

"Support fee", with nature being charge for promotional, advertising, warranty and repair services, will not be exempt from VAT. The recipient of such fee is still required to issue invoices and charge tax (Clause 1, Article 5, Circular No. 219/2013/TT-BTC).

Accordingly, in case a branch pays support fee to distributors in order to implement programs related to sales support, customer care support, shipping, marketing, product display support, etc. for the branch, upon receiving the support fee, the distributor must issue invoices, declare and pay VAT.

Whether a distributor issues a VAT invoice or a sales invoice and charges VAT at the rate of 10% or as a percentage of sales shall depend on the distributor's tax payment method (direct or credit-invoice).

(Official Letter No. 10143/CTHN-TTHT dated 05 April 2021 issued by Hanoi Tax Department)

Processing activities between Export Processing Enterprises ("EPEs") are exempt from VAT, whilst invoices must be issued.

According to Clause 20, Article 4, Circular No. 219/2013/TT-BTC, processing activities between EPEs are not subject to VAT.

Nonetheless, the party performing processing activities is still required to issue invoices (the type for EPEs) as prescribed at Point b, Clause 1, Article 5, Circular No. 119/2014/TT-BTC.

From 05 December 2020, tax declaration and payment will have to comply with the new regulations in Decree No. 126/2020/ND-CP. Accordingly, EPEs only conducting export activities are exempt from submitting VAT declaration dossiers (Clause 3, Article 7).

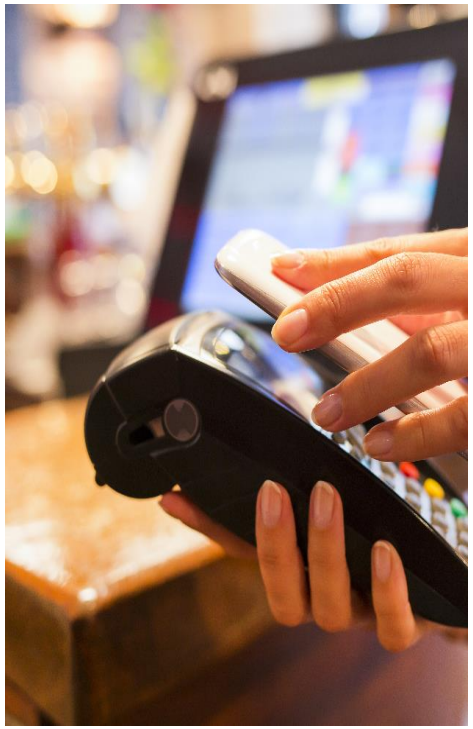
(Official Letter No. 9054/CTHN-TTHT dated 26 March 2021 issued by Hanoi Tax Department)

Guidance on VAT declaration and refund

For businesses that have registered to pay VAT by the deduction method and have new investment projects (except for cases ineligible for tax refund as regulated), upon completion of investment period to start production, if there is still deductible input VAT arising in the investment stage from VND 300 million or more, the taxpayers must declare in the item "Remaining input VAT amount of the investment project requesting for refund" on the VAT return for investment projects (form 02/GTGT) at the end of the investment period. In case at the end of the investment period, the item "Remaining input VAT of the investment project requesting for refund" has not been declared on the VAT return for investment projects (form 02/GTGT), additional declaration shall be made according to the provisions of Point b, Clause 4, Article 7 of Decree No. 126/2020 / ND-CP.

Businesses shall submit application dossier for VAT refund for investment projects when fully meeting the tax refund conditions.

(*Official Letter No. 994/TCT-CS dated 01 April 2021 issued by General Department of Taxation*)



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Foreign Contractor Withholding Tax

GUIDANCE RULINGS

Foreign Contractor Witholding Tax ("FCWT") from goods sold under the form of on-spot import/export

In case a foreign company (A) purschased goods from a Vietnamese company (B) then sold it to other foreign company (C). The foreign company (C) sold such goods to other Vietnamese company (D). Goods were shipped directly from Vietnamese company (B) to Vietnamese company (D). Therefore, the income of foreign company (C) earned in Vietnam on the basis of a sale contract signed with a Vietnamese company (D) would be subject to FCWT.

The Vietnamese company (D) is responsible for withholding, declaring, and paying FCWT on behalf of the foreign company (C). The payable CIT amount is determined by the taxable income (x) multiplied by CIT rate of 1% (for commercial activities under Point a, Clause 2, Article 13, Circular No. 103/2014/TT-BTC dated 06 August 2014 issued by the Ministry of Finance)

(Official Letter No. 478/CTBNI-TTHT dated 29 March 2021, issued by Bac Ninh Tax Department)

FCWT levied on warranty service

In case a Vietnamese Company imports machinery and equipment accompanied with warranty service performed in Vietnam, income of foreign company from provision of goods and warranty service would be subject to FCWT. If the foreign company fails to the conditions to applied declaration method in Vietnam under Article 8, Section 2, Chapter II of Circular No. 103/2014/TT-BTC, the Company is responsible for withholding, declaring, and paying FCWT on behalf of the foreign company, specifically:

- CIT: 1% for machinery and equipment; 5% for warranty service;
- VAT: VAT of machinery and equipment paid in the importation stage; 5% for warranty service.

(Official Letter No. 8143/CTHN-TTHT dated 19 March 2021, issued by Hanoi Tax Department)

Deadline of FCWT finalization for foreign contract applied direct method

From 05 December 2020, the tax declaration and finalization will be applied according to the new regulations in the Decree No. 126/2020/ND-CP. Accordingly, the foreign contractor who applied direct method for tax declaration in Vietnam would have to finalize CIT upon completion of contract (Item e, Clause 6, Article 8, Decree No. 126/2020/ND-CP).

(Official Letter No. 9157/CTHN-TTHT dated 29 March 2021, issued by Hanoi Tax Department)

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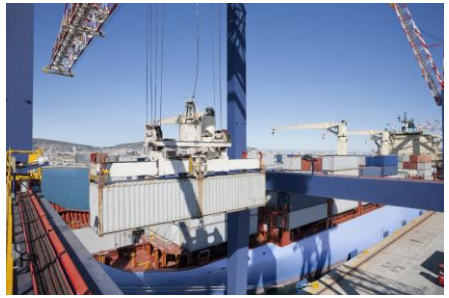
Trade and Customs



NEW REGULATIONS

The Ministry of Finance has issued Circular No. 23/2021/TT-BTC providing guidance on printing, issuing, managing and using electronic stamps for cigarette and alcohol

Electronic stamp is a stamp which has visible signs and contains information and electronic data that can be tracked on the electronic portal of the General Department of Taxation and the General Department of Customs.

Provisions on affixing electronic stamp on cigarette and alcohol are same as currently provided on affixing stamp, in details:

- Each cigarette pack is affixed with one (01) electronic stamp. In case a cigarette pack uses a cellophane wrap, the electronic stamp must be affixed to the cigarette pack before the cellophane is applied. Electronic stamp is attached at a position to ensure it will be ripped upon the opening of the cigarette pack.
- Regarding alcohol, each bottle is affixed with one (01) electronic stamp. Where an alcohol bottle uses a cellophane wrap, the electronic stamp must be affixed to the bottle before the cellophane wrap is applied. In addition, electronic stamps are attached over where alcohol can be removed from the packaging (bottle cap, jar cap, faucet or similar position) to ensure that the stamp is ripped when opening the cap and cannot be re-used.
- The General Department of Customs shall be in charge of printing, issuing and selling electronic stamps of imported cigarettes and imported alcohol; the General Department of Taxation shall be in charge of printing, issuing and selling electronic stamps of cigarettes and alcohol produced for domestic sale.

The Circular shall take effect from 15 May 2021.

(Circular No. 23/2021/TT-BTC dated 30 March 2021 issued by the Ministry of Finance)

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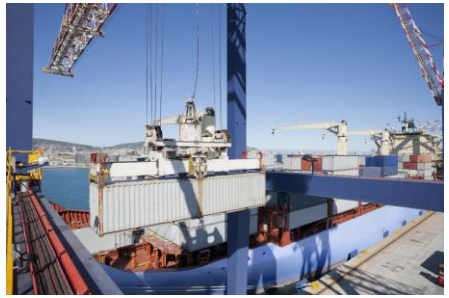

GUIDANCE RULINGS

Clarification on practical application of a number of provisions under the EU-Vietnam Free Trade Agreement ("EVFTA")

1. Guidance on proof of origin ("P/O") under the EVFTA

- Self-certification of origin (or P/O) shall only be allowed by the EU after the registration of REX code. In other words, a self-certified P/O is only valid if it is issued after the effective date of the REX code. As such, in case a P/O is issued prior to the REX code's effective date, it shall be considered invalid.
- Re-submission of amended/replaced P/O shall be permitted if such case has been notified on the Customs declaration (as per Clause 4, Article 7, Circular No. 38/2018 / TT-BTC).
- Additional submission of P/O under the Decree No. 111/2020/ND-CP to enjoy EVFTA preferential tariff is permitted for declarations from 01 August 2020 till before the effective date of the Decree.
- Self-certified P/O issued before the effective date of the EVFTA is invalid.
- For self-certified P/O not indicating the issuance date and place, the Customs will rely on the issuance date and place of the packing list.

(Official Letter No. 712/TCHQ-GSQL dated 05 February 2021 issued by the General Department of Customs)

2. Regarding third party invoice for goods enjoying EVFTA preferential tariff

Goods eligible for EVFTA preferential tariff are required to satisfy the conditions stipulated in Clause 3, Article 5 of Decree No. 111/2020/ND-CP, including: they are listed in the EVFTA Tariff Schedule; imported from EVFTA member countries, and having valid P/O under EVFTA.

Definition of the "Exporter" under EVFTA is stipulated in Clause 5, Article 3, Circular No. 11/2020/TT-BCT. Accordingly, the "Exporter" of goods eligible for EVFTA tariff rates is either the producer or the seller of the goods, not necessarily the invoice issuer (i.e. the shipment's invoice could be issued by a third party who is not an EVFTA member).

Currently, Vietnam has permitted preferential treatment for EU-originating shipments based on self-certified P/O issued by exporters who have registered for REX code.

(Official Letter No. 406/GSQL-GQ4 dated 12 March 2021 issued by the General Department of Customs; and Official Letter No. 678/HQTPHCM-GSQL dated 30 March 2021 issued by the Ho Chi Minh City Customs Department)

3. EVFTA certification of origin on delivery note

EU exporters (having valid REX code) are permitted to self-certify the origin of their goods on invoices, delivery notes or other commercial documents containing sufficient information about the goods.

Self-certification can be conducted by typing, stamping or printing the declaration of origin on the document. The wording and language of origin declaration are specified in Appendix VII, Circular No. 11/2020/TT-BCT.

(Official Letter No. 500/HQTPHCM-GSQL dated 12 March 2021 issued by the Ho Chi Minh City Customs Department)

4. Handling of P/O issued erroneously under the EVFTA

Pursuant to Clause 4, Article 7, Circular No. 38/2018/TT-BTC, the re-submission of P/O for amendment or replacement shall be permitted by the Customs.

Accordingly, in case the original P/O is erroneous, enterprises are allowed to re-submit amended/replaced P/O to enjoy preferential treatment. This also applies to P/O under the EVFTA.

Regarding the REX code, if the declared REX code is determined valid by Customs, the declaration of the phrase "Exporter Reference No ..." shall not affect the validity of the P/O.

(Official Letter No. 1604/TCHQ-GSQL dated 08 April 2021 issued by the General Department of Customs)

5. Declaration of origin for shipments imported from multiple countries of the European Union

In case a shipment imported from Europe (eligible for EVFTA tariff rates) includes different types of goods originating from different EU member countries, the declared origin shall be "EU" or "European Union". The wording of the declaration of origin should comply with the guidance in Appendix VII, Circular No. 11/2020/TT-BCT. In addition, declaration of origin under a specific European country shall not be considered valid.

(Official Letter No. 444/GSQL-GQ4 dated 19 March 2021 issued by the General Department of Customs)

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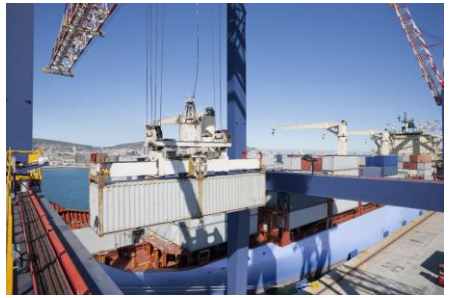

GUIDANCE RULINGS (cont.)

Guidance on the implementation of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ("CPTPP")

1. Conditions for P/O to enjoy CPTPP preferential tariff

Pursuant to Point 2.a, Clause 4, Article 1, Circular No. 62/2019/TT-BTC, two (02) types of P/O can be used to enjoy preferential tariff under CPTPP: (i) P/O issued by the exporter/producer (i.e. self-certified P/O) and (ii) issued by competent authority of the exporting country.

Currently, Vietnamese Customs has not yet been notified by any CPTPP member about approved exporter or manufacturer. Therefore, Vietnam will accept the P/O issued by the exporter or manufacturer (any exporter) as regulated in Point 2a.1, Clause 4, Article 1, Circular No. 62/2019/TT-BTC.

(Official Letter No. 232/GSQL-GQ4 dated 03 February 2021 issued by the General Department of Customs)

2. Requirements for P/O under CPTPP

The Ho Chi Minh City Customs Department notes that P/O used to certify CPTPP origin must satisfy the minimum requirements specified in Point a3, Clause 3, Article 7a, Circular No. 38/2018/TT-BTC supplemented in Circular No. 62/2019/TT-BTC.

Accordingly, in case the exporter is not the certifier, the P/O must include the name, address (including country), mobile number and email address of the exporter. Nonetheless, such information is not required if the manufacturer issues the P/O and has no information of the exporter.

The address of the exporter must be in the exporting country being a member the CPTPP.

(Official Letter No. 777/HQTPHCM-GSQL dated 07 April 2021 issued by the Ho Chi Minh City Customs Department)

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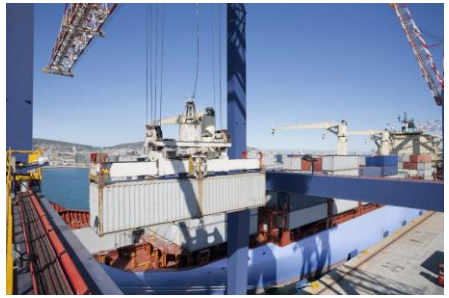

GUIDANCE RULINGS (cont.)

Guidance on application of Official Letter No. 879/TCHQ-TXNK dated 23 February 2021

1. Imported materials for manufacturing exports of which the using purpose has been changed, then sent out for outsourced processing shall not be duty exempted

Pursuant to Resolution No. 178/NQ-CP dated 12 December 2020 and Official Letter No. 879/TCHQ-TXNK dated 23 February 2021, raw materials imported for exports production (under E31 mode), when sent out for outsourced processing of one or several production stages, then returned for further production or immediate export will be duty exempted in accordance with Clause 7, Article 16, the Law on Import and Export Duty No. 107/2016/QH13.

Nevertheless, the General Department of Customs states that the aforementioned policy shall not apply to raw materials imported for manufacturing exports of which the using purpose has been changed and those imported under commercial mode.

Accordingly, for raw materials imported for commercial purposes (under A12 mode) or for manufacturing exports (under E31 mode) then the using purpose being changed (duty paid), even if they are sent out for outsourced processing, such materials shall not be exempt from duties under Clause 7, Article 16, Law on Import and Export Duty No. 107/2016/QH13.

Regarding VAT, raw materials imported for manufacturing exports are exempt from VAT provided that they satisfy the requirements for import duty exemption under Article 12 and Article 31, Decree No. 134/2016/ND-CP.

(Official Letter No. 1580/TCHQ-TXNK dated 06 April 2021 issued by the General Department of Customs; and Official Letter No. 1612/TCHQ-TXNK dated 08 April 2021 issued by the General Department of Customs)

2. Materials imported prior to 01 September 2016, then used to manufacture in-land exported goods are not entitled to duty refund

According to Point d, Clause 1, Article 19, the Law on Import and Export Duty No. 107/2016/QH13 and Clause 1, Article 36, Decree No. 134/2016/ND-CP, duty refunds are granted to cases where import duties of raw materials have been settled before such materials are used to produce goods exported to foreign countries or into non-tariff zones.

Nevertheless, in case taxpayers had paid import duty on materials imported for export production before 01 September 2016, then such materials were used to manufacture exported goods and the finished products were exported under in-land import-export transactions to domestic entities after 01 September 2016, the duty refund policy specified in Decree No. 134/2016/ND-CP shall not apply, and the Official Letter No. 879/TCHQ-TXNK dated 23 February 2021 shall neither apply.

(Official Letter No. 1869/TCHQ-TXNK dated 20 April 2021 issued by the General Department of Customs)

EPEs are exempt from notification and duty payment when conducting processing activities for overseas entities

Since the policies for EPEs are same as those applied for a non-tariff zone (as Clause 1, Article 30, Decree No. 82/2018/ND-CP), goods exported and imported between an EPE and a foreign entity will be exempt from import and export duties according to Clause 4, Article 2, Law on Import and Export Duty No. 107/2016/QH13.

Pursuant to Clause 36, Article 1, Circular No. 39/2018/TT-BTC, EPEs are also exempt from notifying Customs of the processing contract and its appendices.

Thus, for the case that EPEs are hired by foreign entities for processing, the EPEs shall neither be liable to duty when importing raw materials and exporting finished products nor be required to perform the notification or liquidation of the processing contract.

The EPEs are responsible for monitoring and managing the raw materials of the processing contract as well as the materials' proper use.

(Official Letter No. 412/GSQL-GQ2 dated 12 March 2021 issued by the General Department of Customs)

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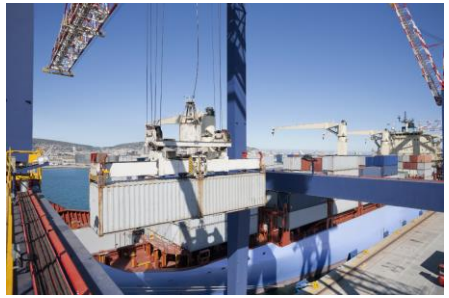

GUIDANCE RULINGS (cont.)

Guidance on constructing hard fences for EPE

According to Clause 1, Article 4, Law on Import and Export Duty No. 107/2016/QH13, an EPE must be separated from the outer area by a "hard fence".

The definition of "hard fence" is specified in Clause 2, Article 30, Decree No. 82/2018/ND-CP as follows: constructed with a fence system, having gates, entrance and exit doors, and fulfilling requirements for the supervision and control by Customs.

The construction of EPE's "hard fences" has been guided by the Ministry of Finance in Official Letter No. 13512/BTC-CST dated 25 September 2014. Accordingly, it must be built of a material that ensures the separation of the EPE from its surrounding area as well as the control requirements of Customs. Such guidance is still valid to date.

(Official Letter No. 350/GSQL-GQ2 dated 04 March 2021 issued by the General Department of Customs)

C/O Form E will be rejected if its back is left blank

If the back of C/O Form E is left blank, the C/O is considered as not compliant with Clause 1, Article 19 and Appendix 2, Circular No. 12/2019/TT-BCT. Accordingly, the Customs will not accept such invalid C/O.

(Official Letter No. 336/GSQL-GQ4 dated 03 March 2021 issued by the General Department of Customs)

Customs procedures when separating companies

1. For goods transferred upon the separation of companies:

a) Regarding duty treatment: in case a company is separated in accordance with Article 199, Law on Enterprises No. 59/2020/QH14, goods delivered from the original EPE to the separated EPE are not subject to export and import duties as well as VAT.

b) Regarding customs procedures: in case a Company is separated in accordance with Article 199, Law on Enterprises No. 59/2020/QH14, customs procedures for goods transferred from the original EPE to the separated EPE in the same export processing zone can either be performed or skipped. In case customs procedures are not performed, the EPE shall prepare supporting documents on the management of transferred goods according to the Ministry of Finance's regulations on enterprise separation, accounting and auditing policies.

2. Submission of finalization report:

In case the separated entity inherits all rights and obligations of a branch of the company, which is an independent branch, it is not required to prepare a finalization report upon the separation from the Parent entity.

3. Customs procedures for goods temporarily imported or temporarily exported upon separation of a company

Pursuant to Point g, Clause 2, Article 25, Decree No. 08/2015/ND-CP dated 21 May 2015 amended and supplemented by clause 12, Article 1, Decree No. 59/2018/ND-CP dated 10 April 2018 of the Government, for shipments that have still been in temporary import or temporary export period; upon the deadline for re-export and re-import, the separated entity must prove that it is the owner of the goods when carrying out re-export and re-import procedures, the customs declarations and in other documents submitted to Customs.

4. The use of import licenses for specialized products

When the separated entity carries out importing procedures for goods for which import licenses are required, it shall present its own import licenses issued by a competent Government authority, or equivalent document issued by competent Government authority allowing the separated company to use the import licenses previously granted to the survived entity.

(Official Letter No. 1414/TCHQ-GSQL dated 26 March 2021 issued by the General Department of Customs)

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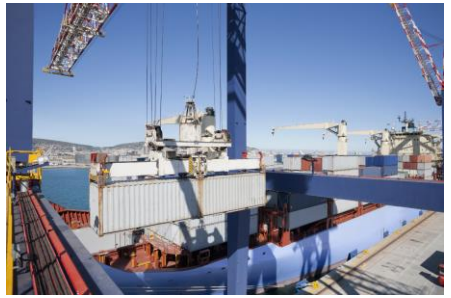
Trade and Customs



GUIDANCE RULINGS (cont.)

Guidance on the contents of C/O Form D

1. How to determine “03 days” from the date of export to certify at the box "Issued Retroactively"

In case the C/O is issued after 03 days from the date of export, the box "Issued Retroactively" must be ticked.

For example: If the export date is 01 December 2020, the C/O issued from 05 December 2020 must have the box "Issued Retroactively" ticked. C/O issued on 04 December 2020 shall be accepted whether the box "Issued Retroactively" is ticked or not.

2. Regarding back-to-back proof of origin issued based on original proof of origin of different shipments

The back-to-back proof of origin in this case must be presented to the Customs of the importing country within the validity of the original proof of origin.

3. Acceptance of C/O replacement

For the C/O of which information can be checked on the management system: the instructions in Official Letter No. 7658/TCHQ-GSQL dated 03 December 2020 of the General Department of Customs should be followed.

For C/O of which information can not be checked on the management system: Local Customs departments are requested not to reject the replaced C/O without the reference number and issue date of the original C/O but send to the General Department of Customs to conduct verification.

4. Complaint by Thai competent authority

The Thailand Customs complains that Vietnam Customs do not accept the hard version of C/O in case the management system is defective. The General Department of Customs requests the local Customs Departments to follow the instructions in Official Letter No. 1043/TCHQ-GSQL dated 04 March 2021 on accepting the hard version of C/O instead of electronic C/O if the system is defective.

(Official Letter No. 1793/TCHQ-GSQL dated 14 April 2021 issued by the General Department of Customs)

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