

ALERT ON TRADE AND CUSTOMS

Decree No. 128/2020/ND-CP on administrative penalties for violations of customs regulations

26 October 2020



General introduction

- On 19 October 2020, Decree No. 128/2020/ND-CP (“**Decree 128**”), to revise the administrative penalties for violations of Customs’ regulations, was issued and will officially take effect on **10 December 2020**.
- When this Decree comes into effect, Decree No. 127/2013/ND-CP dated 15 October 2013 (“Decree 127”) that currently regulates the administrative penalties and enforcement of administrative decisions on customs violations, and Decree No. 45/2016/ND-CP dated 26 May 2016 (“Decree 45”) which amended and supplemented a number of articles of Decree 127 will both expire.
- Decree 128 widens the scope of violations that will be subject to administrative penalties, and significantly increases the level of penalties that can be applied.
- Deloitte Vietnam summarizes the key changes Decree 128 will have on Customs’ administrative penalties regime as follows:



Scope of coverage

The administrative penalties for violations of customs’ regulations covered in this Decree include:

- Violation on customs procedures;
- Violation on customs inspection, supervision and control;
- Administrative violations of tax administration of exported and imported goods;
- Other violations related to exported and imported goods.



Subjects of application

- Domestic organizations and individuals; foreign organizations and individuals that commit customs administrative violations in Vietnam (unless otherwise prescribed in International treaties to which Vietnam is a signatory).
- Other agencies, organizations and individuals related to the sanctioning of administrative violations specified in this Decree.

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Key changes

1

Violations on time limit for customs procedures and tax filing (Article 7)

Several regulations on penalizing violations of prescribed time limits are **supplemented** as follows:

- Failure to make additional declarations within the prescribed time limit for the actual payment, the additional adjustment to the customs valuation that unidentified at the time of registration of the customs declaration;
- Failure to submitting the application within the prescribed time limit when applying for the 0% tariff rate on imported components under the Duty incentive program for automobile manufacturing and assembly or the Duty incentive program for automobile supporting industry;



- Failure to notifying the actual bill of materials (BOM) for manufactured products within the prescribed time limit;
- Declaring and completing procedures after transferring to domestic sale or changing the using purpose of goods not subject to tax, tax exemption, considered for tax exemption, tax refund, tax non-collection, goods subject to tariff rate by tariff quota before the examination or inspection decision.

2

Violations on customs declaration (Article 8)

Decree 128 **additionally** regulates the following notable violations:

- **Incorrectly declaring** the quantity (valued at over VND 10,000,000), name, type, quality, customs value, origin, and code of imported goods **subject to tax without affecting the tax payable amount**;
- Failure to declare on the customs declaration a special relationship between the buyer and the seller as prescribed, where this does not affect **the customs valuation**;
- **Incorrectly** declaring the quantity (valued at over VND 10,000,000), name, type and origin of goods brought into bonded warehouses or bonded factory; Goods brought abroad from bonded warehouses or bonded factory.
- **Supplementing** sanctions in cases where customs declarants detect violations by themselves, and perform additional declarations after the prescribed time limit.

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Key changes

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Violation on tax declaration resulting in insufficient tax payable or an increase in exempted, reduced, refunded or uncollected tax amounts (Article 9)

Supplementing penalties for incorrect declarations resulting in insufficient tax payable or an increase in exempted, reduced, refunded or uncollected tax amounts, including:

- Preparing a finalization report on the quantity of imported raw materials and supplies which have been **not been used** for the production of processed products or for export;
- Declaring imported goods as being for the use in processing and production of goods for export **without having manufacturing facility** of processed goods or exported goods in the territory of Vietnam; or **having no machinery or equipment** owned or eligible to use at a manufacturing site appropriate for imported raw materials or supplies for export processing or production.

Supplementing the penalty calculated on the insufficiently declared or increased tax amount in case of tax exemption, reduction, refund or non-collection as follows:

- A 10% penalty for violations where taxpayers self-discover and supplement their tax dossiers after the deadline for additional declaration of the finalization report but before the issuance of inspection/audit decision from Customs authorities;
- A 20% penalty when the Customs authorities, when inspecting/auditing, discover that the goods registered for customs declaration have not been properly declared customs valuation (with actual payment, additional adjustment), but the enterprise has yet to perform additional declarations.

4

Violation on customs inspection and audit (Article 11)

Supplementing sanctions for the following violations:

- Preparing and submitting finalization reports that are inconsistent with accounting books and customs declarations;
- Failure to comply with inspection or audit decisions from Customs authorities;
- Selling goods at duty-free shops without being stamped "Vietnam duty not paid";
- Selling, at duty-free shops, goods that are prohibited, or suspended, from export or import;
- Failure to provide, or insufficient or late provision of documents, related to exported or imported goods or means of transport.



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Key changes

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Violation on customs supervision (Article 12)

The penalty will range from VND 5,000,000 to VND 80,000,000 (an increase compared to the maximum penalty under current regulations of VND 60,000,000).

Some notable **additional provisions**:

- Export processing enterprises failing to notify the managing Customs authority of the disposal of scraps and defective products from the export processing and production for export or the enterprise's activities;
- Failure to notify or obtain the consent of the Customs authority when transporting goods from duty-free warehouses to duty-free shops, aircrafts and vice versa;
- Failure to ensure the customs or carrier's seal remains intact when transporting goods under customs supervision; using forged customs seals or carrier seals. The penalty will increase if the goods have been consumed.

6

Penalties for tax evasion (Article 14)

Supplementing acts of tax evasion as follows:

- No declaration on raw materials and supplies purchased domestically subject to export tax constituting the products processed for export; incorrectly declaring the value of exported raw materials, supplies and components constituting the processed product, increasing the exempted tax amount for the processed product when re-imported into Vietnam;

- Collaborate with shippers to import goods for tax evasion purposes.

The penalty for taxpayers who commit violations that are not considered as being criminal cases, will be equally applied to **individuals and organizations** (current regulations apply different penalty levels for individuals and organizations) as follows:

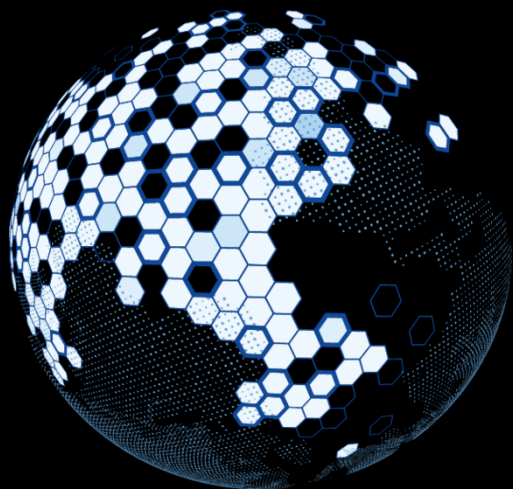
- A fine of 01 time the evaded tax amount in the absence of aggravating circumstances;
- Where aggravating circumstances exist, each aggravating circumstance will increase the penalty by 0.2 time but not exceeding 03 times of the evaded tax amount.



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Other significant changes

7 Other administrative penalties for violations

Content	Decree 128	Current regulations (Decree 127 and Decree 45)
Extenuating circumstances (Article 3)	02 circumstances	03 circumstances
Exemption from administrative penalties in customs (Article 6)	04 circumstances	07 circumstances
Violation on customs control (Article 13)	Penalty from VND 1,000,000 to VND 80,000,000	Penalty from VND 1,000,000 to VND 60,000,000
Export, import, temporary import and re-export under trading, transit, or transfer of goods with images or contents showing incorrect national sovereignty or other contents affecting the security, political, economic, social, diplomatic relations of Vietnam (Article 16)	Penalty from VND 10,000,000 to VND 100,000,000	Not yet provided
Export, import, temporary import and re-export under trading, transit, and transfer of goods with counterfeit Vietnamese origin (Article 17)	Penalty from VND 10,000,000 to VND 100,000,000	Not yet provided
Violations on import and export of goods according to tariff quotas, licenses, control, standards and regulations (Article 18)	Penalty from VND 2,000,000 to VND 50,000,000	Not yet separately provided
Violations on import and export of goods on the list of designated exporters or importers (Article 19)	Penalty from VND 30,000,000 to VND 50,000,000	Not yet provided
Violations on temporary import for re-export, temporary export for re-import of goods (Article 20)	Penalty from VND 20,000,000 to VND 100,000,000	Not yet separately provided
Violations on labeling of imported goods (Article 22)	Penalty from VND 500,000 to VND 60,000,000	Not yet provided



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