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Response to Covid-19 impact

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Tax Administration



GUIDANCE RULING

Guidance on the extension of payment deadline for Corporate Income Tax ("CIT") and Value Added Tax ("VAT") under Decree No. 41/2020/ND-CP

Extension of payment deadline for CIT

- a) The remaining payable CIT amount eligible to the extension shall exclude the quarterly provisional CIT amount and capped at 20% of the total payable CIT per the finalization return;
- b) If the annual CIT taxable period is other than the calendar year, the extended CIT payment deadline shall be determined in accordance with the company's CIT taxable period;
- c) If the taxpayer makes supplemental declaration of 2019 CIT finalization, which increases the payable CIT amount and submit to tax authority before the deadline of CIT payment extension, then the extended CIT amount shall be determined pursuant to point (a) above, in which the payable CIT amount per finalization shall base on supplemental declaration;

d) If the competent authority conduct tax audit/inspection for 2019 CIT finalization period and issue conclusion before the deadline of CIT payment extension; then CIT amount eligible to payment deferral (based on company's self-finalization and result of tax audit/inspection) is determined according to the principle in point (a) above, in which the payable CIT amount for the entire fiscal year is based on the tax audit/inspection results. The extension period is 05 months from the end of the deadline for submission of CIT finalization dossier for the tax year 2019.

Extension of payment deadline for VAT

The VAT eligible to payment deferral covers the VAT amount incurred at the company's head office and the payable VAT of construction work performed outside of head quarter's province or inter-provincial construction work.

(Official Letter No. 5977/BTC-TCT dated 20 May 2020 issued by the Ministry of Finance)

Guidance on economic sectors entitled to the extension of payment deadline for taxes and land rents in Decree No. 41/2020/ND-CP

Determination of economic sector entitled to the deferral of tax payment and land rental fee payment is based on the provisions of Appendix I and II issued together with Decision No. 27/2018/QĐ-TTg dated 06 July 2018 on the economic sector system in Vietnam.

(Official Letter No. 2058/TCT-CS dated 19 May 2020 issued by the Ministry of Finance)

Tax reconciliation of enterprises under audit in 2020

In order to support enterprises, during Covid-19, recover their business activities, the State Audit Office requests audit teams performing audits under the audit plan in 2020 (including audits that have been implemented but have not performed tax reconciliation) not to reconcile tax obligations of enterprises.

In special cases, where through an audit the tax office detects that there are signals of serious tax fraud, the head of the audit team should report to the State Audit Leader in charge, for their consideration and making decision whether to implement tax reconciliation or not.

(Official Letter No. 454/KTN-TH dated 24 April 2020 issued by the State Audit Office)



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Corporate Income Tax



GUIDANCE RULING

Expenses in relation for foreign workers without work permit

Based on the Official Letter No. 357/TCT-CS dated on 30 January 2018 issued by the General Department of Taxation, Hanoi Tax Department issued an official letter regarding treatment on expenses paid for expatriates before having work permit. In particular, these expenses might be treated as non-deductible for CIT computation purpose and the corresponding input VAT shall not be creditable; except for the case where expatriates is under intra-companies assignment within corporation, as specified in 11 service sectors in the Schedule of Specific Commitments in Services with the World Trade Organization.

(Official letter No. 26515/CT-TTHT dated 23 April 2020 issued by Hanoi Tax Department)

Tax incentives for income of term deposit interest

The company enjoying CIT incentive thanks to their geographical areas can apply incentive to all incomes arising from production and business activities within the incentive areas (including interest from term deposit arising in local bank), except for those mentioned in Clause 1, Article 10, Circular No. 96/2015/TT-BTC dated 22 June 2015 issued by the Ministry of Finance.

However, there is no further guidance on how to determine whether the interest income actually arising from the incentive areas or not (e.g. paid by bank branch operating in incentive areas or directly related to the business activities on such incentive areas).

(Official Letter No. 33313/CT-TTHT dated 11 May 2020 issued by Hanoi Tax Department)

Commission expenses paid to individuals

Commission paid to individuals in relation to sales activities is subject to the following tax treatments:

- If individual is granted broker-practicing certificates, have tax registration and business registration, then the individual is required to self-declare and pay tax in accordance with the current regulation.
- If individual does not have business registration, then the income payer (company) should withhold 10% PIT on any payment exceeding VND 2 million. The abovementioned expense will be treated as deductible expense if they satisfy the regulated conditions.

(Official Letter No. 3452/CT-TTHT dated 06 April 2020 issued by Ho Chi Minh City Tax Department)

Offering of gifts to customers and employees

When a company offers gifts to its customers and employees for business related purpose and customers do not require for VAT invoice, it is allowed to issue one invoice for total gift amount, enclosed with the detailed list of receivers on daily basis, in order to determine deductible expense for CIT purpose and declare output VAT as well as claim input VAT deduction (if any).

(Official Letter No. 3522/CT-TTHT dated 07 April 2020 issued by Ho Chi Minh City Tax Department)

Electronic VAT invoice for logistic services attached with detailed list is legitimate

When a company provides logistic services and issues e-invoices to their customers, and the content on the e-invoice is referred as logistic service with a detailed list of transportation schedule (for reconciliation purpose between customers and the service provider), the e-invoice is still considered as a valid invoice in accordance with current regulation, and for the buyer to record the expenses and declare input VAT.

(Official Letter No. 3451/CT-TTHT dated on 06 April 2020 issued by Ho Chi Minh City Tax Department)



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Personal Income Tax and Labor



GUIDANCE RULING

Conditions for foreign experts to enter Vietnam to work before the announcement of the end of the Covid-19 pandemic by the Government of Vietnam

The Government allows foreign investors, experts, skilled workers, business managers (hereinafter referred to as foreign experts) to immigrate to work in Vietnam providing that they have to comply with the quarantine regulations. Accordingly, the foreign experts are required to take samples for testing twice from the entry, stay in concentrated quarantine sites or private quarantine hotel for 14 days from the entry date and take additional 14-day medical supervision to ensure no infection in the community.

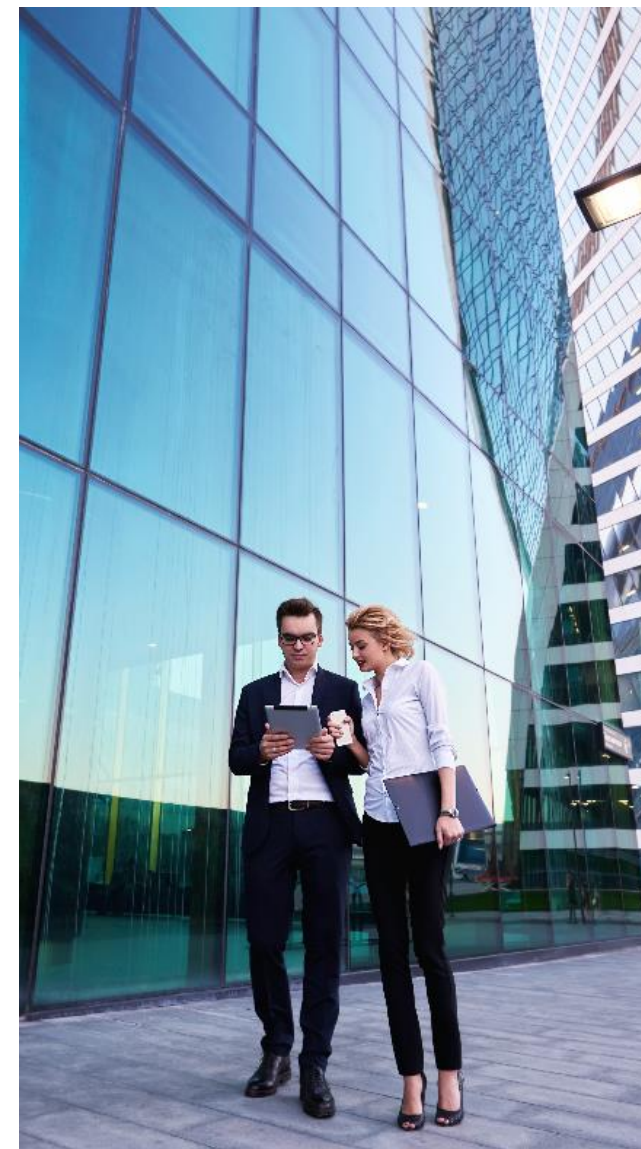
The companies/enterprises shall register a list of foreign experts to the provincial People's Committee for approval. The list will be sent to the Immigration Department - the Ministry of Public Security for consideration and settlement.

(Official Letter No. 2847/CV-BCD dated 23 May 2020 issued by the National Steering Committee for Covid-19 Prevention and Control)

Withholding Personal Income Tax on gifts for employees winning internal lucky withdraw or for long-service employees

When a company offers gifts in-kind to employees through lucky withdraw programs or to long-service employees, these benefits are considered as employment income and subject to Personal Income Tax withholding.

(Official Letter No. 3620/CT-TTHT dated 10 April 2020 issued by Ho Chi Minh City Tax Department)



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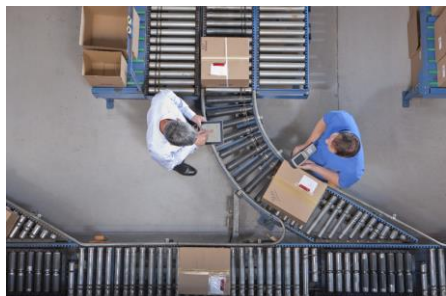
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Value Added Tax



GUIDANCE RULING

Creditable input VAT is not recognized as CIT deductible expense

When having creditable input VAT related to exporting goods, and the company records such amount as deductible expenses to reduce CIT liability instead of declaring in VAT return; the tax authority, upon inspection, shall disallow the expense deduction, collect additional CIT and impose penalties for CIT under-declaration.

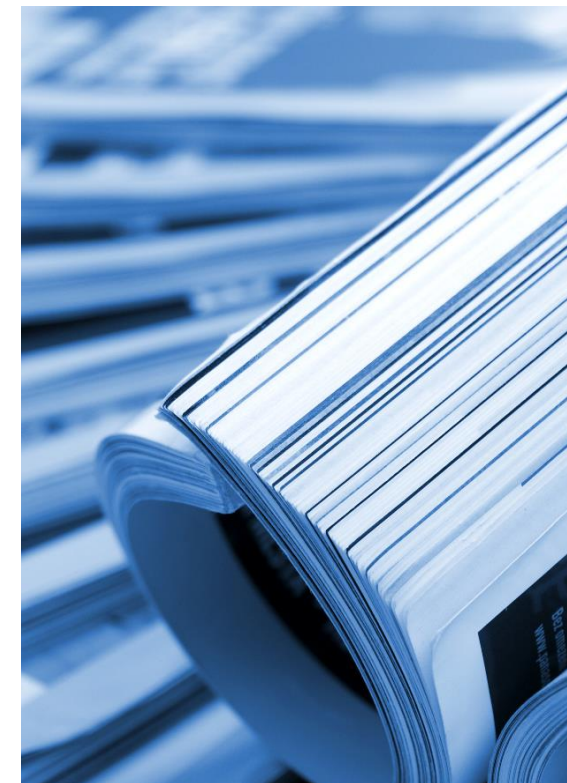
Upon making payment of additional CIT and administrative penalties for false declaration, the company is allowed to make adjustment on VAT declaration as per regulation.

(Official Letter No. 1746/TCT-CS dated 04 May 2020 issued by the General Department of Taxation)

Use electronic supporting documents for exported goods and services from 01 November 2020

From 01 November 2020 or when the Tax authorities notify the application of e-invoices according to Decree No. 119/2019/ND-CP and Circular No. 68/2020/TT-BTC, the contents of electronic invoices shall follow guidance in these legal documents. Accordingly, businesses having exported goods and service (including processing of exported goods) shall use electronic VAT invoice or electronic sale invoice upon exportation.

(Official Letter No. 2061/TCT-CS dated 19 May 2020 issued by the General Department of Taxation)



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Foreign Contractor Withholding Tax



Inbound international forwarding and warehousing services to Vietnam are not subject to Foreign Contractor Withholding Tax ("FCWT")

Pursuant to Article 2, Article 12 and Article 13, Circular No. 103/2014/TT-BTC, inbound international forwarding and warehousing services from foreign countries to Vietnam are not subject to FCWT.

However, outbound international forwarding and warehousing services which depart from Vietnam is still subject to FCWT.

(Official Letter No. 37026/CT-TTHT dated 18 May 2020 issued by Hanoi Tax Department)

GUIDANCE RULING

Maintenance and repairing services performed in Vietnam are subject to FCWT

When foreign contractors, who do not maintain any permanent establishment in Vietnam, perform the maintenance and repairing services for its clients in Vietnam under contractual basis, then income from these service shall be subject to FCWT under the Circular No. 103/2014/TT-BTC dated 06 August 2014 issued by the Ministry of Finance.

According to Article 20, Circular No. 156/2013/TT-BTC dated 06 November 2013 of the Ministry of Finance, if the foreign contractors are subject to CIT relief thanks to the Double Tax Avoidance Agreement ("DTA"), they must submit treaty application dossier to tax authority within 15 days prior to the deadline for FCWT declaration.

(Official Letter No. 34309/CT-TTHT dated 12 May 2020 issued by Hanoi Tax Department)

Income generated in airlines ticket-selling-office ("TSO") of international airlines in Vietnam is subject to FCWT

Income generated from selling tickets by a licensed TSO of an international airlines in Vietnam shall be subject to FCWT. The TSO is responsible for quarterly CIT declaration and payment as regulated in Circular No. 156/2013/TT-BTC dated 06 November 2013, while no finalization at the year end is required.

Provided that the international airlines are CIT exempted thanks to DTA, the TSO must submit treaty application dossier within 15 days prior to the deadline for FCWT declaration as per Clause 3, Article 20, Circular No. 156/2013/TT-BTC.

(Official Letter No. 26326/CT-TTHT dated 23 April 2020 issued by Hanoi Tax Department)

FCWT levied on services purchased from parent companies

Where foreign parent company pays for offshore lease of the internet connection line (to another foreign company) for the purpose of inter-companies conference call, phone call between the overseas parent company and the subsidiary in Vietnam on monthly basis and charges back to subsidiary proportionately (including installation expenses and monthly charges):

- If the services are rendered in accordance with Law on Telecommunications and performed outside of Vietnam, then income received by parent company will not be subject to FCWT in Vietnam;
- If the services are rendered not in line with the Law on Telecommunications or the services are performed in Vietnam, then such income of parent company will be subject to FCWT at CIT rate of 5%.

Where the subsidiary in Vietnam use other auxiliary software provided by parent company (e.g. management support software, global commerce and production analysis software, etc.), the corresponding income of the parent company will be subject to FCWT under the regulation of Circular No. 103/2014/TT-BTC, i.e. 10% on the software value and 5% on other service fees.

(Official Letter No. 951/CT-TTHT dated 22 April 2020 issued by Hai Phong Tax Department)



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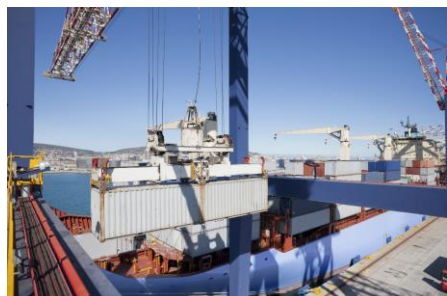
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Trade & Customs



NEW REGULATION

Announcement of new, amended, supplemented and removed procedures on customs administration

The Decision is issued with guidance on 26 new and amended customs administrative procedures, which include 14 new procedures (Check and determination on the origin of export goods; Deduction on the certificate of origin of imported goods, etc.), 12 amended and supplemented procedures (HS code advance ruling; Check and determination on the origin of imported goods, etc.) and 8 procedures removed (Consultation for individuals and businesses on customs administrative procedures, etc.).

(Decision No. 671/QD-BTC dated 24 April 2020 issued by the Ministry of Finance)

Procedures for transit of goods through ASEAN Transit System (“ACTS System”)

The Government issues a Decree detailing the procedures for transit of goods through the ACTS System. This is an electronic transit system built, managed and operated by the General Department of Customs (“GDC”) on the basis of technical documents agreed among ASEAN members. Enterprises could choose (optional) to carry out transit procedures through this system or carry out transit procedures under current regulations.

(Decree No. 46/2020/ND-CP dated 09 April 2020 issued by the Government effective from 01 June 2020)

New regulations on border gates for goods, which are temporarily imported then re-exported, transshipped, and stored in bonded warehouses.

From 00 hour on 01 January 2021, goods, which are temporarily imported then re-exported, or transshipped, if being imported into, or re-exported, from Vietnam through land border, such imports or re-exports shall only be carried out through international, main border gates (e.g. bilateral ones), which are opened in accordance with Decree No. 112/2014/ND-CP dated 21 November 2014.

(Circular No. 09/2020/TT-BTC dated 14 May 2020 issued by the Ministry of Industry and Trade effective from 30 June 2020)

Replacement of the list of information technology (“IT”) products which requires declaration of conformity with technical regulations

The list of IT goods of group 2 which requires declaration of conformity with technical regulations is updated with:

- i. IT goods with both certification and declaration of technical-regulation conformity;
- ii. IT goods with declaration of technical-regulation conformity.

Goods subject to the above should be classified and match with HS codes in Circular No. 65/2017/TT-BTC, in compliance with current tariff schedules and relevant technical regulations.

(Circular No. 11/2020/TT-BTTTT dated 14 May 2020 issued by the Ministry of Information and Communications takes effective from 01 July 2020 and replaces Circular No. 05/2019/TT-BTTTT dated 09 July 2019)



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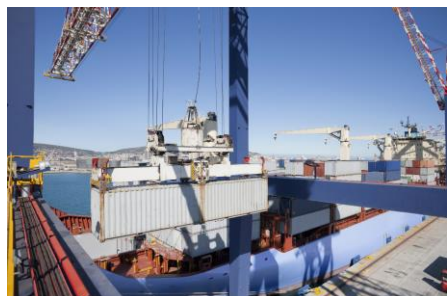
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Trade & Customs



NEW REGULATION (cont.)

Pilot scheme on one-time consultation of customs valuation for multiple use

The pilot scheme allows the use of the consultation results of customs valuation of the previous import/ export for the next import(s)/export(s) within one or more Customs Sub-departments belonging to one or many different Customs Departments.

Under this pilot scheme, the Notice of multiple use of the results of consultations (referred to as "Consultation Notice") issued by the General Director of the GDC can be used at all provincial Customs Departments across the country. For Consultation Notice issued by the Director of Customs Department at province/city level, they shall only be used within that provincial/municipal Customs Department.

The validity of a Consultation Notice shall not exceed 06 months (180 days) from the date of issuance.

Criteria for accepting the Consultation Notice at the time of customs declaration registration:

- i. The Consultation Notice is still valid;
- ii. Name of goods, HS code, unit of origin, name of import-export partner, payment method stated on the declaration must be identical to the information as in the Consultation Notice;

iii. The customs value declared in the customs declaration is equal to or higher than the value stated in the Consultation Notice.

In addition, the scheme also provides guidance on the process of issuing and cancelling the Consultation Notice.

(Decision No. 1304/QĐ-TCHQ dated 29 April 2020 issued by the General Department of Taxation effective from 10 May 2020)

GUIDANCE RULING

Label of the processed goods for export must be clearly stated in the contract

Labels and origin of goods are two of compulsory terms to be stated in processing contracts. Accordingly, the label of exported goods must be agreed in the processing contract.

Exporting enterprises are responsible for the origin of goods as prescribed in Circular No. 05/2018/TT-BTC or contact the C/O issuing authority of the Ministry of Industry and Trade for detailed instructions and declaration of origin on the export declaration under section 2.69, Appendix II, Circular No. 38/2015/TT-BTC.

(Official Letter No. 1381/HQHCM-GSQL dated 13 May 2020 issued by Customs Department of Ho Chi Minh City)

On-spot imported goods under designation of foreign clients are not eligible for ATIGA duty rates

On-spot imported goods as ordered by foreign clients and not imported from free trade zones are not eligible for ATIGA duty rates. Therefore, the importer has to pay additional import tax and late payment interest from the date of customs clearance to the date of additional tax payment.

(Official Letter No. 2917/TCHQ-TXNK dated 05 May 2020 issued by the GDC)

Import duty exemption is not allowed if not notifying the change of manufacturing facility for export goods

In case of changing the manufacturing facility and the enterprise did not notify to the Customs authorities within three (03) working days, then the export manufacturing enterprise should not be eligible to import duty exempt of the imported raw materials. Accordingly, the company must pay additional duties and late payment interest (if any).

Currently, there is no regulation on refund of the deemed/imposed duties on imported raw materials which are not eligible for duty exemption but later used for manufacturing and then finished goods exported.

(Official Letter No. 2567/TCHQ-TXNK dated 22 April 2020 issued by the GDC)

Import duty on raw materials will not be refunded without registration of outsource processing for export goods production to the customs authorities

In case an enterprise which imports materials for manufacturing to export hires external vendors to outsource some stages, then receives the semi-finished products to continue manufacturing and exports finished goods; but has not notified the Customs authorities of the outsourcing, then the import duty shall not be considered for exemption for materials delivered to the outsourced vendors.

(Official Letter No. 3150/TCHQ-TXNK dated 15 May 2020 issued by the GDC)



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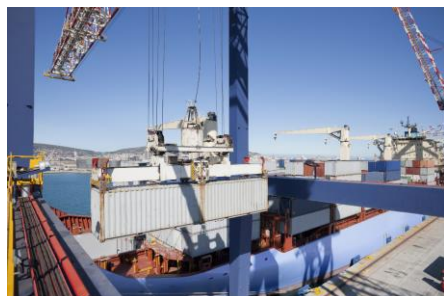
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Trade & Customs



GUIDANCE RULING (cont.)

Domestic enterprises that hire Export Processing Enterprise (“EPE”) to process must pay import duty and VAT when re-importing finished products

When an enterprise imports materials and supplies for processing for export, and provided they meet the conditions of Clause 2, Article 10, Decree No. 134/2016/ND-CP, they shall be exempt from import duty and VAT for the imported raw materials, and at the same time exempted from export duty of finished products under Clause 6, Article 16, Law on Import-Export Tax No. 107/2016/QH13.

However, where a domestic enterprise imports goods for processing and then hires an EPE for processing, only duty on materials exported to EPE for outsourcing shall be exempted. For finished products processed at EPEs, which are imported back to the domestic enterprise, the enterprise must declare and pay import duty and VAT.

Currently, the Law on Import and Export Tax No. 107/2016/QH13 and Decree No. 134/2016/ND-CP do not regulate the cases of import tax refund for domestic enterprises that have export processing contracts but hire export processing enterprises and have paid import duties on finished products which re-imported from EPE, even after that, they continue to manufacture/process for export.

(Official Letter No. 3018/TCHQ-TXNK dated 11 May 2020 issued by the GDC)

C/O Form AI in electronic form is not yet allowed

According to the Customs Department of Ho Chi Minh City, use of e-form of C/O Form AI for goods imported and exported under the ASEAN - India Free Trade Agreement is currently not allowed. Consequently, C/O Form AI in paper have to be applied as prescribed in Clause 1, Article 5, Appendix IV, Circular No. 15/2010/TT-BCT.

(Official Letter No. 1341/HQHCM-GSQL dated 08 May 2020 and Official Letter No. 1360/HQHCM-GSQL dated 11 May 2020 issued by the Customs Department of Ho Chi Minh City)

HS code classification results of goods are valid for 03 years

According to the regulations in Circular No. 38/2015/TT-BTC, the declarant is allowed to use the results of analysis and classification of the previous customs clearance shipment to declare the name of goods and HS code for subsequent shipments, which have the same name, composition, physical and chemical properties, features, utilities, and imported from the same manufacturer, for a maximum of 03 years from the date of analysis and classification results (except for cases where the legal basis for notifying results of analysis and classification be amended, supplemented or replaced).

However, during the effective period of classification results, on the basis of risk management and if in suspect, the Customs authorities still have the right to select certain consignments for analysis and inspection.

(Official Letter No. 2787/TCHQ-TXNK dated 29 April 2020 issued by the GDC)

Use of foreign codes and bar codes on export goods without permission shall be subject to a fine of up to VND 20 million

When an enterprise uses foreign codes or barcodes to print on goods manufactured, processed, packaged, extracted for export without written approval of the foreign code or bar code owner, or licenses of foreign competent authorities, it shall be considered as violating regulations on using codes and barcodes under Clause 2, Article 19b, Decree No. 74/2018/ND-CP.

Accordingly, enterprises might be sanctioned for violations according to Point a, Clause 3, Article 32, Decree No. 119/2017/ND-CP (with a penalty range from VND 10 million to VND 20 million).

(Official Letter No. 2417/TCHQ-ĐTCBL dated 16 April 2020 issued by the GDC)



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