



## **Tax Alert**

Vietnam Customs and Global Trade Alert

*A fresh perspective*

November 2017

## CHANGES TO THE MANUFACTURING/PROCESSING FOR EXPORT REGIMES ARE UNDER CONSIDERATION

The existing Customs legislation (including Law, Decree and Circular) governing the operation of manufacturing/processing for export regimes is currently under review.

There are two main revisions under consideration, which if adopted, could have a positive and significant impact on the ability for companies to claim duty refund or enhance duty exemption opportunities, but would likely result in an increased compliance burden. Specifically:

- Duty refund will be available in cases where an enterprise imports duty paid materials for production and then sells finished products (manufactured from those materials) to other enterprises for further manufacturing and export.

Currently under Import/Export Regulation 107/2016/QH13 and Decree 134/2016/ND-CP, duty exemption/refund is not permitted in the above trading model. Ministry of Finance has prepared a Draft Amendment to the Law, allowing duty refund, to be presented for approval at the next National Assembly meeting in the first half of 2018.

The Draft Amendment is though silent on the treatment of materials imported under duty exemption, processed and the finished products sold to other parties for further processing and export.

- Changes to the Finalization Report of duty exempted materials used in manufacturing/processing for export.

A Draft Circular, amending and supplementing Circular 38/2015/TT-BTC, introduces many new requirements in term of forms, content, and reporting methods to manage duty exempted materials used in manufacturing or processing for export. Some key changes are:

- ✓ Requirement to provide more detail on the composition, and purpose of use, for each material listed in both the **technical Bill of Materials ("BOM")** and **Actual BOM** - used to produce each product;
- ✓ The technical BOM will have to be declared to Customs **prior to the first exportation** of the product;
- ✓ The **Actual BOM** is to be reported to Customs when filing the Finalization Report,
- ✓ There will be a requirement to report **quantity** of materials used - instead of values taken directly from the accounting book; and
- ✓ Separate report form for manufacturing and processing with new template for each.

The Draft Circular is planned to be issued to take effect from 1 January 2018. If this occurs then the changes would likely be applicable for the Finalization Report period from FY2017.

Proposed changes set out in the Drafts are still subject to change, and we shall issue further Alerts to keep you updated on the progress.

## WHAT THIS MEANS FOR YOU

A change in the Law to allow duty refund to the original materials importer, where there is another manufacturer prior to export of the finished products, would align Customs Law with the business models of many multinationals with multi-site production operations in Vietnam.

The ability for the original materials importer to claim back the duty paid, will though be dependent upon them receiving evidence of export of finished products. There will therefore be a need for good co-operation between all parties involved in the production for export, and processes to be put in place to track imported materials through to export of finished products. Failure to do so will undoubtedly result in denial of duty refund.

For those companies that import materials under duty exemption, our assessment is that the original material importer may need to re-declare their materials, pay duty and subsequently claim duty refund based on proof of export provided by the second manufacturer/exporter.

The proposed changes to the Finalization Report (of duty exempted materials consumed in for export manufacturing/processing) should provide greater clarity and consistency in how Customs manage the schemes. This in turn should provide for more certainty of treatment to enterprises.

Businesses will though need to prepare more detailed reports, and maintain all relevant documents in a full and consistent manner as a basis for reporting. It will be important to ensure that there is corrolation in data/information is presented as it can be expected that any discrepancies in the data presented will result in more challenges from customs authorities.

## WHAT TO DO

For those enterprises which might going forward be eligible for duty refund, it will be important to assess whether existing processes and procedures will be sufficient to demonstrate to Customs that their duty paid imported materials were used in the manufacture of finished goods exported from Vietnam.

Those enterprises that currently import under duty exemption should, assuming no revision in the Draft Law to be tabled, consider whether their existing import model for materials needs to be revised.

With regard to the revisions to Finalization Report requirements, enterprises will, if the Draft Circular is approved, need to:

- ✓ Prepare and archive documents related to material–finished product cycle, including all documents following up inventory items from purchase stage to sale stage;
- ✓ Ensure the accuracy, completeness and consistence of the documents for the purpose of reporting.

## HOW WE CAN SUPPORT

Deloitte Vietnam’s processing for export schemes specialists, can provide practical and hands-on support, in the following areas:

- ✓ Advising how proposed changes to the existing Customs legislation (including Law, Decree and Circular) could impact your specific business model;
- ✓ Support in making representations to the GDC or MOF on further changes to Customs legislation to facilitate your business model;
- ✓ Advise on alternative business models and the customs and tax implications for each options under consideration;
- ✓ Assessing whether your existing processes and procedures are sufficient to take advantage of available duty refund, or will meet any additional reporting requirements;

- ✓ Conduct compliance reviews to test the accuracy, completeness and consistence of related data – and where gaps are identified provide recommendations of remedial actions;
- ✓ Assist to prepare finalization reports in accordance with the new regulation.

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Should you have any further inquiries, please contact us.

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