

# Global Tax Update

## Vietnam

Deloitte Tohmatsu Tax Co.

December 2017

### Vietnam Customs and Global Trade Alert

#### (1) GENERAL DEPARTMENT OF CUSTOMS TAKES ACTION ON USE OF INCORRECT HS CODES.

On 25 August 2017, the General Department of Customs (GDC) issued an internal Directive No. 5591/TCHQ-TXNK to all city/provincial Departments of Customs instructing them to re-examine the HS codes declared on certain imported goods.

The Directive was issued following a review by GDC on how, in practice, city/provincial Customs were applying Regulations on the tariff classification of goods, and previously issued HS code rulings.

That review identified a number of instances where incorrect HS codes had been declared by importers, and accepted by city/provincial Customs.

The list of goods subject to further checks on the HS codes used is wide ranging, and includes, but not limited to, certain:

- Agricultural Motors;
- Beverages containing collagen;
- Bicycles;
- Exercise equipment;
- Fruits and meats;
- Home and industrial electro-mechanical equipment;
- Medical apparatus; and
- Spraying equipment.

Lists of the goods subject to review, with specific HS codes, are in the appendixes of the Directive 5591.

#### (2) WHAT THIS MEANS FOR YOU

The Directive gives a clear message from GDC that the city/provincial Customs are requested to:

- re-examine the previously accepted HS codes for the listed goods;

- ensure that the HS codes declared are in line with classification regulations and rulings; where not
- pursue collection of any underpayments of customs duties and other border taxes; and
- impose penalties, as appropriate.

The Directive does not specify the period that city/provincial Customs should look back, but it can be anticipated that the checks will be a minimum of 5 years – being the period where Customs can charge both duties and penalties. Additionally, the on-going importation of such goods will be under close review by the customs offices.

#### (3) WHAT TO DO

Those importers of goods are listed for further review, should check (through their customs agents/freight forwarders as necessary) what HS codes were declared, and whether they hold sufficient evidence (e.g. product technical specifications, declaration by the exporters, common classification of similar goods) to defend those HS codes.

If it is determined, with reference to the Vietnam Customs Tariff, and any relevant ruling/guidance issued by GDC, that incorrect HS codes were declared, and then the exposure will need to be quantified, and consideration given to making a voluntary disclosure to local Customs of any customs duties and other border taxes underpaid.

**Note:** In making a voluntary disclosure, it cannot be ruled out that penalties will be imposed by Customs, but there is scope to minimize those penalties.

Going forward, in determining the appropriate HS code for the imported goods, importers need to have the sufficient knowledge of the Vietnam Customs Tariff; the technical characteristics and/or function of

the goods; and be aware of any Official Letters issued by GDC on identical or similar goods.

Where this function is outsourced to custom agents, or freight forwarders, it is vital that that importers:

- Have procedures in place to ensure that their appointed agents/freight forwarders are given sufficient information to make their HS determination; and
- Agree to the HS codes determined by their appointed agents/freight forwarders; and
- Perform periodic checks to confirm that the agreed HS codes are in practice being declared on import declarations.

It is important to note, that determining the correct HS code for imported goods also impacts:

- Whether the goods are subject to any license controls or other restrictions;
- Entitlement to duty reliefs or tariff exemptions; and
- Availability to preferential duty treatment under relevant Free Trade Agreements.

Accordingly, Deloitte Vietnam will keep you updated of any further formal guidance from the authorities in this area.

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