



# Global Tax Update

Vietnam

Deloitte Tohmatsu Tax Co.

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## 1. New Circular-Custom procedure, custom supervision and import export duty etc

New Circular guiding on custom procedure; custom audit and supervision; import export duty and tax administration for imported and exported goods, replacing the Circular 128/2013/TT-BTC, Circular 22/2014/TT-BTC and some other relevant Circulars.

Following Decree 08/2015/NĐ-CP dated 21/1/2015 issued by the Government detailing the Law on Custom 2014 regarding the custom procedure; custom supervisions; on 25/3/2015 the Ministry of Finance had issued **Circular 38/2015/TT-BTC** guiding on custom procedure; custom audit and supervision; import export duty and tax administration for imported, exported goods. The Circular has come to effect from 1/4/2015 and repealed Circular 128//2013/TT-BTC regarding the custom procedure, custom management and supervisions, and import export duty; Circular 22/2014/TT-BTC on e-customs; Circular 13/2014/TT-BTC on processing, and Circular 94/2014/TT-BTC regarding custom procedure, custom management and control on temporary import for re-exported goods and other related regulations.

We would like to update a number of important changes in Circular 38 as follows:

### (1) Risk classification applied to the enterprise

The Circular classifies enterprises based on their compliance status to customs regulations under 03 levels, including:

- Prioritized enterprise
- Complied enterprise
- Non-complied enterprise

The enterprise's risk classification result will be used in the application of many procedures such as inspection on custom documentation, inspection on goods, custom supervision and post-clearance inspection.

The post-clearance inspection procedure, for the purpose of compliance assessment, will be conducted on not more than 5% of the total number of the complied enterprises.

### (2) Control of Declared customs value

The Circular supplements valuation procedures during customs clearance and valuation consultation process, which is new content in comparison to Circular 128/2013/TT-BTC and Circular 22/2014/TT-BTC with more detail, easy to apply procedures for both declarer and customs authorities, specifically:

- Specify cases that have sufficient basis for rejection of the declared value and

suspected cases that does not have enough basis for rejection of the declared value;

- In case there is insufficient basis for the rejection of the declared value, the customs authorities should release the goods and start consultation procedure;
- After the consultation process, if the declarer still does not agree with the conclusion of the customs authorities, the goods can still be cleared at the declared value. However, customs authorities shall use the post-customs clearance audit to further verify the case.

### **(3) Supervisions on origin of the imports-exports**

The Circular also supplements examination procedure on origin of the goods during customs clearance, of which some notable details include:

- The immaterial differences that are accepted in examination of Certificate of Origin;
- Guidance for the scenario that the contents of the C/O are not compatible with customs dossier;
- Procedure for verifying the origin of the goods for the competent issuer of the C/O.

### **(4) Actual-export certification**

The Circular changes the approach to verify goods actually exported, which shall apply to electronic customs clearance. As such, Customs Officers would certify after the goods passed the monitoring area in the system.

### **(5) Abolish registration requirement on material codes, and consumption norms for export processing and manufacturing**

The Circular regulates customs procedures and supervisions on export manufacturing goods, export processing goods, and import/export

goods of Export Processing Enterprises with some notable points that follow:

- The enterprises are not required to notify processing contracts, materials codes, product codes, and not required to conduct norms registration applied to export manufacturing and export processing;
- The enterprises are required to submit finalization reports for materials following the approach of Inventory Input – Output – Balance annually, applied to imported materials which are used for processing and manufacturing contract. The submission deadline is within 90 days since the end of the financial year.
- The enterprises are not required to file and pay import Value Added Tax of the imported materials and supplies used to manufacture exported goods which are still in the stock, not yet put into manufacturing, or had been used into production but yet exported after 275 days since the importing date.

### **(6) Custom procedure applied to non-resident entities in Vietnam**

The Circular supplements detail guidance relating to customs dossiers, and customs procedures applied to goods being imported – exported by foreign entities conducting import-export right who do not present in Vietnam.

## **2. New Circular guiding the classification of imports and exports, replacing Circular No. 49/2010/TT-BTC; and Circular guiding customs valuation, replacing Circular No. 205/2010/TT-BTC, and Circular No. 29/2014/ TT-BTC**

Along with the issuance of Circular 38, the Ministry of Finance also issued other circulars to conduct detail instruction of the Law on Customs 2014, including:

- Circular 14/2015/TT-BTC issued on 30 January 2015 provide guidance on the analysis of commodity classification for quality and safety management on Import/Export goods. This Circular becomes effective from 17 March 2015, replacing Circular 49/2010/TT-BTC dated 12 April 2010; Article 17, Article 97 of Circular 128/2013/ TT-BTC dated 09 October 2013; and Official Letter 1280/BTC-TCHQ dated 24 January 2014.
- Circular 39/2015/TT-BTC dated 25 March 2015 regulating customs valuation of import-export goods. The Circular provides detail instructions of defined contents in the Circular 205/2010/ TT-BTC dated 15 December 2010 and Circular 29/2014/ TT-BTC dated 26 February 2014. This Circular replaces such Circular 205 and Circular 29 and becomes effective from 1 April 2015.

We would like to update some of the notable points of Circular 14 and Circular 39 as follows:

**(1) Legal basis for HS code classification**

Circular 14 specifies the reference sources applied in classification of export-import goods and the order of application, which includes:

- Vietnam list of goods for export and import
- Explanatory notes to HS Nomenclature
- World Customs Organization's (WCO) collection of opinions on classification
- Supplementary notes of ASEAN Harmonized Tariff Nomenclature (AHTN); and
- Database on Vietnam list of goods for export and import.

Circular 14 also regulates specifically the authorization and responsibilities of specialized agencies to coordinate handling in case there are different opinions in classification of goods.

**(2) Registration procedures for classification of unassembled machinery**

Circular 14 supplements the registration procedures of unassembled machinery in order to be classified under the Rule No. 2a of total 6 (six) general rules interpreting the HS System. Accordingly, customs declarant must register the list of unassembled parts of machinery and equipment before the goods are imported, and also customs authority should monitor, follow-up and reconcile upon actual importation.

**(3) Conditions to add royalties, license fees to customs value**

Circular 39 summarizes the guidance in previous circulars, including some additional details regarding how to determine the conditions to add royalties, license fees into the dutiable value of imported goods, including (i) the cases considered to be related to the imported goods, and (ii) the activities considered to be simple processing.

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