

## Global Tax Update

### Vietnam

Deloitte Tohmatsu Tax Co.

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#### Decree No. 134/2016/NĐ-CP provides detailed guidance on Export and Import duty.

The Government has just issued Decree No. 134/2016/NĐ-CP (“Decree 134”) providing detailed guidance on a number of articles of Law No. 107/2016/QH13 on Export and Import duty. This decree replaces Decree No. 87/2010/NĐ-CP and takes effect from 1 September 2016.

Basically, Decree 134 provides guidance on issues related to import duty exemption, deduction and refund. Below are some notable instructions in Decree 134:

#### (1) Tax liability on goods imported for export production

##### 1) Import duty exemption:

Decree 134 clearly lists cases where materials, supplies, spare parts, semi-products, finished products imported for export production are entitled to import duty exemption, including:

- Materials, supplies (including packaging materials or the packages themselves), spare parts and semi-products directly constituting exported goods or directly involved in the manufacturing process but not directly transformed into the exported goods;
- Finished products imported for being assembled into exported goods or jointly packaged as a full set with the exported goods;
- Spare parts imported for replacements under warranty of the exported goods;
- Goods imported not for trade, exchange or consumption purpose but as sample goods.

Therefore, the basis on which an enterprise applies import duty exemption includes:

- The enterprise must have its-own facilities for manufacturing exported goods within Vietnam’s territory; must hold ownership or use-right of machines, equipment at the manufacturing site which is suitable for processing the materials,

supplies, spare parts imported for export production; and give notification of such manufacturing site in accordance with customs regulations.

- The enterprise must perform finalization on the use of imported materials. Upon finalization, the enterprise must accurately and fairly declare the value or amount of duty-free materials, supplies, and spare parts actually imported for export production.

##### 2) Import duty refund:

In case tax payers do not apply tax exemption as instructed hereinabove and already paid import duty for goods imported for production and trading purposes; but then use such imported goods in manufacturing and actually export the finished goods overseas or into non-tariff zones; the corresponding import duty on these goods could still be refunded.

#### (2) Import duty exemption of goods imported to form fixed assets of incentive investment projects

Decree 134 supplements a number of regulations including:

- Goods imported to form fixed assets of an investment project of which a part is eligible for investment incentive shall be entitled to import duty exemption as long as such imported goods are separately allocated and recorded and directly used for the incentive part of the investment project.
- Goods imported to form fixed assets for production purpose of an investment project set up in a incentivized location but not operating in a incentivized sector shall be exempted from import duty.

**1) Tax liability on goods manufactured in non-tariff zones**

Decree 134 clarifies the tax liability of goods produced in non-tariff zones for domestic sales. Accordingly, when goods produced, recycled, and assembled in non-tariff zones using imported materials are later exported to domestic market, their import duty rate and dutiable value shall be similar to those of normal goods imported into domestic market.

**2) Import duty exemption on imported materials, supplies, spare parts for projects eligible for special investment incentives in a 5 year period since the start of production.**

Decree 134 changes the regulations on the determination of the start of production. Pursuant to former regulations, the start date is verified by the Economical Zone Management Board or provincial Department of Industry and Trade. Pursuant to Decree 134, tax payers self-declare and take responsibility for the start date and notify the customs authorities in charge before carrying out customs procedures. The start date is the date of official production without taking into account trial production period.

**3) Documents and procedures for tax exemption**

Decree No. 134/2015/ND-CP replaces the definition of “duty-free list registration” by “duty-free list notification”. Accordingly, instead of checking the registration of the duty-free list within 10 days as before, customs authorities only have a maximum of 3 working days to notify project owners about whether the list is received, any supporting documents must be submitted, any clarification is needed OR inform project owners that the goods are not eligible for tax exemption.

**4) Other notable guidance**

Besides the above-mentioned points, Decree 134 also provides some other critical guidance:

- Specific regulations on the tax-exempted value for regular imported goods, non-commercial imported goods, gifts and presents, and goods imported by courier.
- Regulations on the requirement that tax payers shall submit a letter of guarantee issued by a credit institution or a certificate of deposit in the bank account of customs authorities at the State Treasury in case of tax exemption for goods temporarily imported for export.
- Authorities in charge are required to issue Lists of specific goods eligible for import duty exemption in special cases.

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