

ALERT ON TRADE AND CUSTOMS

**Article 8, Resolution No. 178/NQ-CP
Duty exemption for goods imported to
manufacture products for export of
enterprises having outsourcing activity**

24 December 2020

General information

On 12 December 2020, Prime Minister Nguyen Xuan Phuc signed Resolution No. 178/NQ-CP (“Resolution 178”), covering the following notable contents:

1. Evaluation on the implementation of Resolution No. 01/NQ-CP; Vietnam’s socio-economic situation in November and eleven months of 2020; the prevention of the Covid-19 pandemic;
2. Storm and flood response and recovery activities in the Central region;
3. The implementation and disbursement of public investment capital and solutions to promote the disbursement of public investment capital in 2020 and the assignment of the Government’s budget plan in 2021;
4. The current status of, and solutions for completing the tasks of, State budget collection by 2020;
5. Draft Resolution of the Government on the main tasks and solutions for implementing the socio-economic development plan and the State budget estimation for 2021;
6. Proposing the development of the Law on Domestic Violence Prevention and Control (amended);
7. Payment for provision of public products and services in the area of Hanoi from 01 January 2020 to the time of bidding results according to Decree No. 32/2019/ND-CP ;
8. **Treatment on goods imported to manufacture products for export, where enterprises have outsourcing activity;**
9. The implementation of the tasks and the working results of the Group in November 2020.

In this Alert, Deloitte will only focus on updating **Article 8 regarding tax treatment on goods imported to manufacture products for export where enterprises have outsourcing activity.**



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Duty exemption for imported goods to manufacture exports

Current legal basis

- Clause 2, Article 12, Decree No. 134/2016/ND-CP dated 01 September 2016 provides the **basis for tax exemption** for imported goods for the manufacturing of exports: “the importer should **have the ownership or the right to use** machinery and equipment at the manufacturing facility, which are suitable with the raw materials, supplies and components imported for the production of export goods”;

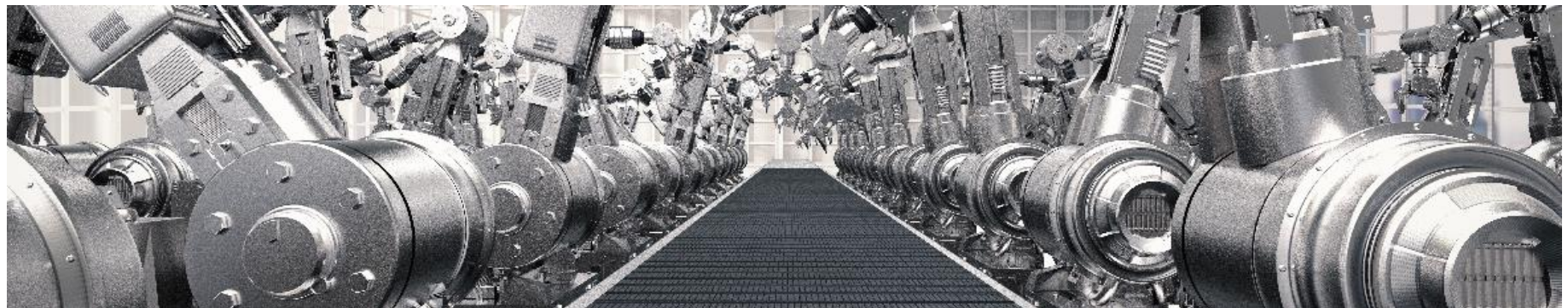
Practical guidance of the General Department of Customs:

A number of Official letters have been issued, by the General Department of Customs, to provide guidance on the implementation of Article 12, Decree No. 134/2016/ND-CP. Specifically:

- Point 11 of the appendix attached to the Official Letter No. 11567/TCHQ-TXNK dated 08 December, states : “*In case enterprises hires other enterprises to reprocess or process some stages of the manufacturing process, there would be **no tax exemption or tax refund***”.

- Official Letters No. 6740/TXNK-CST dated 01 November 2018; No. 79/TCHQ-TXNK dated 03 January 2019; No. 858/TCHQ-TXNK dated 14 February 2020 of the General Department of Customs, all guided that:

*“From 01 September 2016, in cases organizations or individuals import goods for export manufacturing purpose but **do not directly manufacture the whole process to make exported goods (i.e. to outsource a part or all of the imported goods to another organization or individual to reprocess or process one or several stages, then receive back the products to continue to manufacture and export final products; or process one or several stages then hire other organizations or individuals to process or produce one or several stages and receive the product back to continue manufacturing and/or exporting the product), the requirements for tax exemption as prescribed in Decree No. 134/2016/ND-CP are not satisfied**”.*



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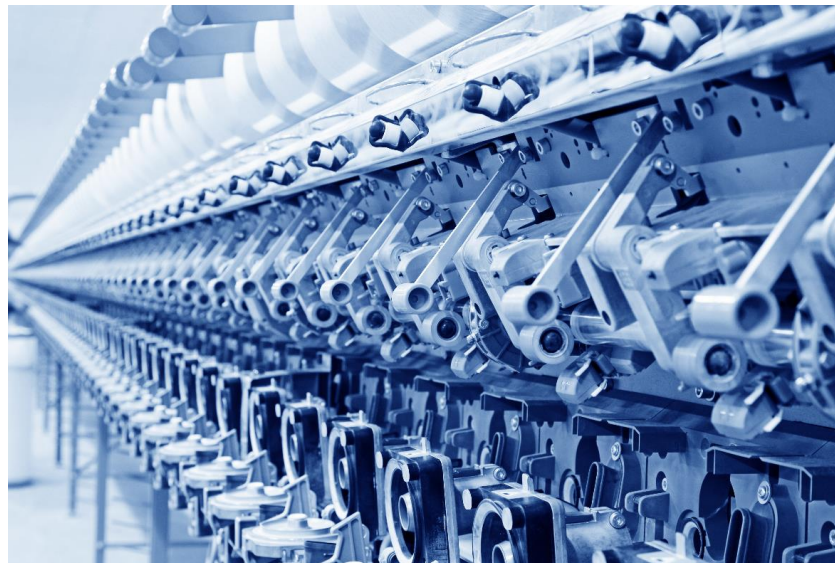
Article 8, Resolution No. 178/NQ-CP Duty exemption for goods imported to manufacture products for export of enterprises having outsourcing activity

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Duty exemption for imported goods to manufacture exports

Current practice

- Customs authorities have discovered many cases where exporting manufacturing enterprises have outsourced, one or several production stages, then received back processed products to continue manufacturing exports. In those cases the Customs authorities have typically taken action to collect customs duty/Value Added Tax (“VAT”) on the corresponding imported materials.
- Some enterprises, who cannot avoid outsourcing some part of the production process, have changed their business model from manufacturing for export to processing for export due to the outsourcing activity in the production process. However, changing to a processing model can lead to problems in the purchase, sale, transfer of raw materials and construction of export contracts with business partners.



Article 8, Resolution 178

The Government unanimously agreed with the Ministry of Finance’s opinion that:

- Export manufacturing enterprises can **enjoy duty exemption** when outsourcing **one or several stages of the production**, provided they receive back semi-finished products, and then continue manufacturing exports or exporting the products to foreign countries;
- Those manufacturing enterprises who already paid the customs duty/VAT shall be **eligible for a refund** according to regulations; and **no retrospective collection of tax** in cases where customs duty/VAT have been notified but the amount has not been paid;
- Customs need to **build strict management measures** to prevent the abuse of policies; urgently review and add this content to the draft Decree amending Decree No. 134/2016/ND-CP.

Deloitte’s recommendation to enterprises

- To review the business operation to prepare for **suitable production and business model** upon the guidance of the Ministry of Finance/General Department of Customs, where necessary and appropriate;
- In case enterprises have been imposed and/or retrospectively collected tax on the raw materials sent out for outsourced processing: **Review the amount of tax paid** for refund application process (if applicable), or **Review the amount of tax deemed but not paid** for appropriate business planning.
- Should the enterprise require assistance to work with customs authorities and handle the refund of the paid tax amount, please contact Deloitte team.



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