



Background

On 01 September 2016, Decree No. 134/2016/ND-CP ("Decree 134") guiding the implementation of the Law on Export-Import Taxes had officially taken effect. Over nearly 05 years of implementation, in addition to providing legal basis for the Customs authorities as well as organizations and individuals involved in import and export activities, the Decree has revealed its unclear provisions and shortcomings for execution.

To support businesses resolving such matters, on 11 March 2021, the Government has issued **Decree No. 18/2021/ND-CP** ("Decree 18") amending and supplementing Decree 134, which will officially take effect from **25 April 2021**.

Key changes

The changes to Decree 134 are far reaching but the key revisions to its Articles, are listed below:

1. Supplementary provisions on the tariff rate applied to in-land import and export goods (Article 3);
2. The duty exemption basis for goods imported in re-processing cases is now specified (Article 10);
3. Supplementary provisions on duty exemption basis for goods that are imported for export production but outsourced for processing; duty exemption basis for specific in-land export and import cases (Article 12);
4. The duty exemption basis, for goods that are imported to form fixed assets of projects enjoying investment incentives, has been supplemented (Article 14);
5. Supplementary provisions on the conditions for customs inspection, supervision and duty treatment to export processing enterprises ("EPE") (Article 28a);
6. The provisions on the supervision of the Customs authority and finalization report on the usage of duty-free imported goods under a Master List have been supplemented (Article 31a);
7. Enhanced provisions for the duty refund of imported goods that have to re-exported (Article 34).

ALERT ON TRADE AND CUSTOMS

Decree No. 18/2021/ND-CP
amending, supplementing
Decree No. 134/2016/ND-CP to
implement the Law on
Export-Import Taxes

15 March 2021



Key changes

1. Tariff rate applies to in-land import and export goods (Article 3)

Clause 1: The application of import and export tariff rates to in-land exports and imports is supplemented and linked to Clause 3 of this Article.

Clause 3: Provide details on:

- In-land exported goods from non-tariff zone are subject to the export tariff rates as prescribed in Decree No. 122/2016/ND-CP and 57/2020/ND-CP;
- In-land imported goods (except the case of import from non-tariff zones) are subject to MFN import tax rates as prescribed in Decree No. 125/2017/ND-CP and 57/2020/ND-CP;
- In-land imported goods from non-tariff zones to the domestic market will be applied MFN, FTA, or normal tariff rates as prescribed, depending on each specific case.



2. Duty exemption basis for goods in re-processing cases (Article 10)

Point g, Clause 1: Processed products are exempted from export tariff when exported to overseas or in-land export as designated, if they are merely processed from imported materials.

Clause 2: Provide detailed regulations on duty exemption basis for goods in case of re-processing:

- The enterprise has signed the processing contract, has the ownership or right to use the processing export facility and machinery;
- The enterprise has notified customs authority of the processing contract, re-processing contract, and their appendix;
- In case the enterprise has failed to notify the re-processing facility or the re-processing contract on time as prescribed by the customs law, only sanctions for administrative violations in the customs area are applied.

Clause 4: The provision on the threshold amount (3%) of scrap, NG and excess raw materials and supplies that were imported for processing is removed;

Clause 5: The dossier for import tax exemption must include 01 copy of the written designation/agreement for delivering goods of the foreign organization or individual.

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Key changes (cont.)

3. Duty exemption basis for goods that are imported for export production but outsourced for processing; and for specific in-land export and import cases (Article 12)

Point d, Clause 1: Goods imported for export production, which are allowed to be destroyed in Vietnam and actually destroyed, are exempt from import duties.

Clause 2: Provide details on:

- Duty exemption basis for goods imported for manufacturing exports but outsourced for processing (Point a, b);
- The responsibility of in-land exporter: In-land exporters must notify Customs authorities of the completeness of import customs declarations (“CD”) within 15 days from the date of in-land export CD completed. In case the exporters are not able to notify customs authority on-time, the export CD must be re-declared, materials that were imported to manufacture products for the in-land export CD shall be duty paid. Exporters still have chance to get duty refund in case they are able to notify Customs authorities of the completeness of import CD accordingly (Point e);
- In-land exported products are not exempted from export duty (Point g);
- In-land imported products under processing model are exempt from import duty if the required conditions are satisfied. In-land imported products under other models are subject to import duty and be able to get refund when being exported to overseas/non-tariff zones (Point h).

Clause 3: In-land exporters must additionally submit a copy of the foreign organization's or individual's designation/agreement indicating the delivery of goods in Vietnam.





Key changes (cont.)

4. Duty exemption basis for goods that are imported to form fixed assets of projects enjoying investment incentives (Article 14)

Clause 6: The basis for determining the subjects eligible for tax exemption, e.g. by industry, location of investment, size of invested capital, etc. is specified.

5. Conditions for customs inspection, supervision and duty treatment to EPE (Article 28a)

Article 28a is supplemented with the following provisions:

- Required conditions of EPE for customs inspection and supervision purpose:
 - Surrounded by hard fences and gates to separate with outside area; goods delivery are only handled through the gates;
 - The camera system is setup at all gates/doors and storage location at all time (24/24 including holidays); the camera system is directly connected with the managing customs department's system and the data is archived for at least 12 months;
 - Having software to manage the in-out-balance status of goods that are non-subject to tax for reporting purpose to Customs authorities.
- Procedures for inspection and certification on the qualification of customs inspection and supervision conditions for EPEs or EPE project investors are applied in the following specified cases:

- Investors applying for an investment registration certificate for a new project;
- Investors requesting for issuance or modification of investment registration certificate for the expansion project;
- Registration for conversion from a non-EPE to an EPE;
- Enterprises with new/expansion projects are entitled to duty treatment to non-tariff zones from the time they are recognized as EPE on their investment registration certificate or on the amended one, or a document issued by a competent investment registration agency in case the issuance of an investment registration certificate is not required (hereafter referred as "the time of investment certificate granted");
- For those cases not yet entitled to duty treatment to non-tariff zones from the time of investment certificate granted to the time prior to receiving the certification on qualification of customs inspection and supervision conditions as prescribed in Decree No. 82/2018/ND-CP and this Decree, after the enterprises meet all requirements of customs inspection and supervision conditions, the overpaid tax amount shall be handled per the tax administration laws and regulations.



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Key changes (cont.)

6. The supervision of the Customs authority and finalization report on the usage of duty-free imported goods under a Master List (Article 31a)

Article 31a is supplemented with the provisions on the notification and inspection of the imported goods under a Master list. In details:

- Annually, within 90 days from fiscal year end, organizations and individuals shall submit the finalization report on the status of usage of duty exempted goods in the fiscal year to the local customs department where the Master list was earlier submitted; until the entire project is terminated or all of the goods have been re-exported out of Vietnam or their using purpose changed, domestically sold, or actually disposed;
- For raw materials, supplies and components that are exempt from import tax for 5-year period (Article 15), raw materials, supplies and components imported for the manufacture and assembly of medical equipment (Article 23), the finalization report on the status of usage of duty exempted goods must be submitted annually within 5-year period from the operation date of the project. Within 30 days from the end of the 5-year period, the customs declaration and tax obligations of the unused imported raw materials, supplies and components must be fulfilled;
- In case of import of raw materials and supplies used for manufacturing: the finalization report shall be submitted within 30 days from the date of completion of the manufacturing process. Within 60 days from the date of report submission, the customs authority shall carry out a physical inspection at the enterprise's premise;

- In case of import of a combination or production line, which must be separately imported in multiple shipments without being able to sequentially subtraction from the registered quantity of goods: the enterprise shall submit the finalization report on the completion of the installation of the combination within 30 days from the date of completion. Within 60 days from the date of report submission, the customs authority shall carry out an inspection at the enterprise's premise. Annually, as prescribed in Clause 1 of this Article, the project owner shall notify the status of usage of the products after completion and installation process.

7. Duty refund of imported goods that have to re-exported (Article 34)

Point a, Clause 1: It is specified that in cases where imported goods must be re-exported, including exported to goods' owners, exported to foreign countries or to the non-tariff area for use within the area could get duty refund.





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