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TAX ALERT

The Ministry of Finance proposed amendments to inland import-export regulation

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The Ministry of Finance proposed amendments to Article 35, Decree No. 08/2015/ND-CP on inland import-export regulation

After the proposal of the General Department of Customs (“GDC”) on 29 May 2023 on in-land import-export activities submitted to the Ministry of Finance (“MOF”) (kindly refer to Deloitte’s recent tax alerts about GDC’s proposal [here](#) and GDC guidance on specific cases [here](#)), on 25 August 2023 Official Letter No. 9133/BTC-TCHQ has been submitted to the Government Office by MOF summarizing its assessment of the implementation of regulation in relation to inland import-export activities. Some notable contents of the MOF assessment and proposed changes to regulations include:

- **Total abolishment of the in-land import-export transactions as set out in Article 35, Decree No. 08/2015/ND-CP (“Decree 08”)** due to the inconsistency of current regulations on in-land import-export activities. Citing that:
 - Customs procedures governing, goods that are traded between a domestic enterprise and a foreign trader without a presence in Vietnam and designated to be delivered in Vietnam (point c, clause 1) could be eliminated. MOF has proposed 01-year transition period for the continuance of application of point c, counted from the effective date of the Decree amending Decree 08 (expectedly in Quarter IV of 2023).
 - Customs procedures governing, goods that are processed by Vietnamese entity for a foreign trader but sold by the foreign trader to organizations or individuals in Vietnam (point a clause 1), and goods traded between Vietnam entities and EPEs or entities located in Customs controlled areas (point b clause 1), are already regulated in Circular No. 38/2015/TT-BTC and related regulations.
- **Proposed replacement policies for transactions under point c, clause 1, Article 35, Decree 08:**
 - **For goods purchased from domestic market:** the transaction would be conducted as sales transaction between two domestic enterprises, paying tax according to regulations as domestic transactions.

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- For goods manufactured from duty exemption imported materials for export manufacturing, the sales transaction with designation of goods delivered within Vietnam by a foreign trader without a presence in Vietnam: **import-export procedures through bonded warehouses or separated customs areas could be conducted by the Vietnamese parties**, and tax policies applicable to the corresponding customs procedures should be followed.
- Vietnam entities having transactions with a foreign trader without a presence in Vietnam: consideration could be given to obtaining **Export Processing Enterprise** (“EPE”) status.
- If none of the proposed policies can be adopted, and the enterprise has a sale transaction with the designation of goods delivered within Vietnam by a foreign trader, the transaction would be treated **as a domestic sales transaction**. Imported materials for export manufacturing under a tax-free scheme would be required to declare a change in the using purpose and **fulfill tax obligations**. When conducting domestic transactions, taxes are paid in accordance with regulations.

Deloitte’s recommendations for the business community

- Remain alert to further guidance on the proposed amendments by MOF, and future developments of the Draft Decree amending Decree 08;
- Assess the potential impact that the proposed regulatory changes may have on your current business model;
- Consult with subject matter experts on how current contractual arrangements could be revised to be compliant with the revised regulations; and
- Discuss with business partners and prepare for restructuring the transaction models to comply with the regulations, as appropriate.

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