

## ALERT ON TRADE AND CUSTOMS

Official Letter No. 2687/TCHQ-TXNK dated 01 June 2021 guiding the implementation of Decree No. 18/2021/ND-CP

11 June 2021



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### Background

- On 11 March 2021, the Government issued Decree No. 18/2021/ND-CP (“Decree 18”) amending and supplementing a number of articles of Decree No. 134/2016/ND-CP (“Decree 134”) guiding measures to implement the Law on Export and Import Duties. Decree 18 officially took effect from 25 April 2021.
- Given that a number of enterprises have encountered many issues in applying the provisions of Decree 18, on 01 June 2021, the General Department of Customs issued **Official Letter No. 2687/TCHQ-TXNK** (“OL 2687”) providing detailed guidance on the implementation of several important contents in Decree 18.

### Key contents

1. Guidance on export processing and export manufacturing activities;
2. Guidance on the application of Article 28a of Decree 18 on conditions of customs inspection and supervision for export processing enterprises (“EPEs”);
3. Other notable points for in-land import and export activities.



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### 1. Guidance on export processing and export manufacturing activities

#	Category	Export processing	Export manufacturing
1.1	Sub-processing outsourced to domestic enterprises	<ul style="list-style-type: none"> <li>Finished products processed from domestic materials and supplies, which are subjected to export duties, <b>shall be subject to export duties</b> at exportation, based on the value and the duty rate of such materials and supplies.</li> <li>When both parties of the processing contract are domestic enterprises (not EPEs or enterprises in non-tariff zones), they are not required to carry out customs procedures but need to file the supporting documents related to the delivery of materials, supplies, products, machinery and equipment according to regulations of the Ministry of Finance (“MoF”). The principal is responsible for notifying the management Customs Sub-Department about <b>the name of processer, processing contracts, appendices, and manufacturing facility of the processer</b> before delivery of materials and supplies.</li> </ul>	<p>The principal enterprises are responsible for notifying the Customs authorities about <b>the name of processer, processing contracts, appendices, and manufacturing facility of the processer</b> before delivery of materials and supplies.</p>
1.2	Sub-processing outsourced to enterprises in non-tariff zone or overseas	<ul style="list-style-type: none"> <li>Imported goods, or semi-finished goods processed from imported goods, when delivered to EPEs or to enterprises in overseas for outsourced processing, are <b>exempt from export duties</b>.</li> <li>Products processed by EPEs or foreign enterprises, when imported back to Vietnam, <b>are subject to import duties</b>.</li> </ul>	

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### 1. Guidance on export processing and export manufacturing activities (cont'd)

#	Category	Export processing	Export manufacturing
1.3	In-land exports	<ul style="list-style-type: none"> <li>Within <b>15 days</b> from the date of customs clearance of the export declaration, the in-land exporter must notify the Customs authority of the completed import Customs declaration by post; or submit it directly at the Customs Sub-Department where the export declaration was registered; or submit the scan version of the notification on the V5 system (after the Customs system is updated with this function).</li> <li>If the import Customs declaration is not submitted within 15 days, the in-land exporter must register a new Customs declaration (with <b>A42</b> import mode), <b>declare and pay import duties</b> on the materials and supplies used to manufacture products, which have been in-land exported, according to the value and tariff rate of the imported materials and supplies at the time when the new Customs declaration is registered.</li> <li>For cases where the in-land exporter notifies the completion of import Customs declaration after declaring the new Customs declaration (with A42 import mode) and paying import duties in accordance with the new Customs declaration; or in accordance with the duty imposed by the Customs authority, the Customs authority shall <b>handle the overpaid duty amount</b> in accordance with the Law on Tax Administration.</li> </ul>	
		<ul style="list-style-type: none"> <li>Finished products processed from domestic materials and supplies which are <b>subject to export duties</b>, shall be taxed at the time of in-land exportation, based on the value and the duty rate of such materials and supplies.</li> </ul>	<ul style="list-style-type: none"> <li>In-land export products are <b>not exempt from export duties</b>, except for the cases where goods are not-subject-to export duty (e.g. goods exported by EPEs or by enterprises in non-tariff zones).</li> </ul>

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### 1. Guidance on export processing and export manufacturing activities (cont'd)

#	Category	Export processing	Export manufacturing
1.4	In-land imports	<ul style="list-style-type: none"> <li>The in-land imported goods are <b>exempt from import duties</b> if the import Customs declaration are registered with <b>export processing mode</b>.</li> <li>If the in-land imported goods are registered with other import mode (rather than export processing), e.g. <b>import for trading mode (A11) or import for manufacturing mode (A12), the importer shall declare and pay the import duties</b>.</li> <li>If the import duties had already been paid for the in-land imported goods but then the goods were used to manufacture products which has been actually exported to overseas or to non-tariff zones, <b>the import duties paid shall be refunded</b>.</li> </ul>	
1.5	Scraps and wastes	<ul style="list-style-type: none"> <li>Scraps and wastes disposed from the processing process are <b>exempt from import duties</b>.</li> <li>Scraps and wastes disposed from the processing process, when <b>sold to domestic market, are exempt from import duties</b>, the taxpayers do not need to conduct customs procedures but need <b>to pay</b> the Value Added Tax ("VAT"), Excise Tax, Environmental Protection Tax (if any) to the <b>tax authority</b>.</li> <li>For scraps and wastes disposed from the processing process that have been sold to domestic market before 25 April 2021, the taxpayer still need to <b>declare and pay VAT to the Customs authority</b>, following the instructions of the Official Letter No. 5845/BTC-TCHQ dated 22 May 2019 and Official Letter No. 4344/TCHQ-TXNK dated 01 July 2019 issued by GDC.</li> </ul>	<ul style="list-style-type: none"> <li>Scraps and wastes disposed from the manufacturing process are <b>exempted from import duties</b>.</li> <li>Scraps and wastes disposed from the manufacturing process, when <b>sold to domestic market, are exempt from import duties</b>, the taxpayer does not need to conduct customs procedures but need <b>to pay</b> the Value Added Tax ("VAT"), Excise Tax, Environmental Protection Tax (if any) to the <b>tax authority</b>.</li> <li>For scraps and wastes disposed from the manufacturing process that have been sold to domestic market before 25 April 2021, the taxpayer still need to <b>declare and pay VAT to the Customs authority</b>.</li> </ul>

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## 2. Guidance on the application of Article 28a on conditions of customs inspection and supervision for EPEs

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Article 28a on conditions of customs inspection and supervision for EPEs that are non-tariff zones

### 2.1. Conditions of customs inspection and supervision for EPEs that are non-tariff zones

The Customs Sub-Department managing an EPE, upon receiving the request from the investment licensing authority, shall conduct the inspection and certification of customs inspection and supervision conditions to that EPE.

The Customs Sub-Department shall provide detailed guidance on the implementation of notifying the completion of such conditions *process could be repetitive*) within one (01) year since the effective date of Decree 18, in the following cases:

- ❑ EPEs (including enterprises with new and expanded investment projects) **have notified** to the customs authority of having met such conditions for customs inspection and supervision but were identified as not after being checked by customs authorities.
- ❑ The EPE has been granted an Investment Registration Certificate (“IRC”), an adjusted IRC, or has a document from a competent investment registration authority in case it is not required to issue an IRC before 25 April 2021 and **is in operation**, including the case that the EPE has been certified by the customs authority on having met such conditions before 25 April 2021.
- ❑ The EPE has been granted an IRC, an amended IRC, or has a document from a competent investment registration authority in case it is not required to issue a Certificate of Registration before 25 April 2021 and **is under construction**, including the case that the EPE has been certified by the customs authority on having met such conditions before 25 April 2021.

The notification form of the EPE and the Customs authority shall be made according to Forms No. 25 and 26 attached to Appendix VII of Decree 18.

### 2.2. Surveillance cameras at cargo storage locations

There must be surveillance cameras in **areas for storing goods** such as warehouses, storage yards for raw materials, supplies, finished products, semi-finished products, machinery, equipment and other not-subject-to-duty goods.

Other areas used for production and goods using such as factories, offices, and canteens do not require cameras.

### 2.3. Software to manage not-subject-to-duty goods

According to the General Department of Customs, EPEs **have already used** software which can monitor and extract data to prepare for the finalization reports (in - out - balance of imported materials, supplies and exported products manufactured from imported materials and supplies) pursuant to Clause 39, Article 1, Circular No. 39/2018/TT-BTC amending, supplementing Point b, Clause 2, Article 60, Circular No. 38/2015/TT-BTC.



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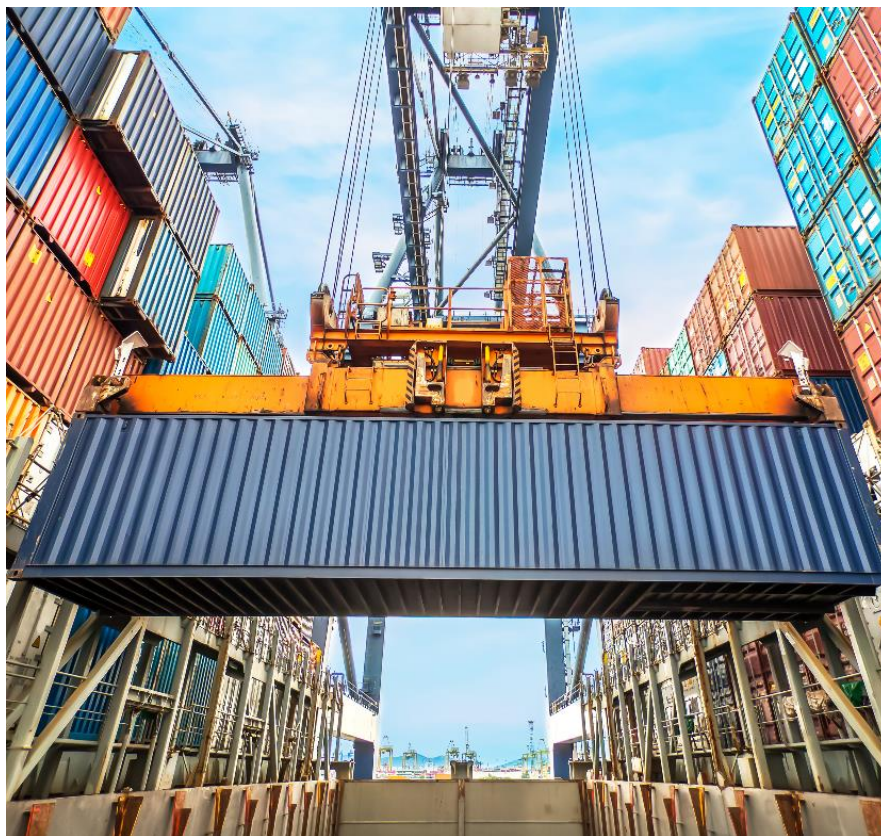


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### 3. Other notable points about in-land import and export activities

#### 3.1. For in-land export cases to be eligible accepted, the exporter must submit the written document on assigned delivery

When carrying out in-land export procedures, the exporter must submit the written document on assigned delivery from overseas entity or individuals. If this document is not available, the activity shall not be considered as an in-land export.



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#### 3.2. Customs authorities shall supervise the in-land import declaration regarding the export processing , export manufacturing activities

Customs Sub-Departments are requested to:

- Summarize the list of in-land export, import by the following 02 functions of the Ecustoms-V5 system: "I. Centralized data mining" function and "H. In-land import declaration/1. Monitoring 15-day overdue declaration" function.
- On the basis of data extracted from the two functions, identify overdue in-land export declaration without corresponding in-land import declaration.
- Provide guidance to enterprise to declare the correct content to the "Enterprise's internal management number" on customs declaration. *(Note: This guidance was further amended by Official Letter No. 2736/TCHQ-TXNK dated 03/06/2021):*
  - In-land export declaration: "#&XKTC"
  - In-land import declaration: "#&NKTC#In-land export declaration reference (11 letters)"

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