

Latest developments on the on-the-spot export and import transactions

Customs & Global Trade Alert
December 2023

This Alert is to provide the latest development on the on-the-spot (OTS) export and import transaction in Vietnam as of 2023.

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As mentioned in the previous Customs Alerts in August and September 2023, the Ministry of Finance (MoF) submitted the proposal regarding the amendment of Article 35 Decree No. 08/2015/ND-CP (Article 35) regulating the OTS export and import transactions to the Government Office. Thereafter, the Deputy Prime Minister requested MoF to seek more insights from the relevant Ministries on the proposal and include further analysis on the feasibility of the proposal on the next round of report to the Government.

On implementation, MoF has sought and received the constructive feedbacks from the Ministry of Planning and Investment (MPI) and Ministry of Industry and Trade (MoIT) on this matter, as below:

MPI's key notes in the Official Letter No. 10107/BKHDT-TCTT on 4 December 2023

- ▶ With an aim to secure the balance between the state and business, MoF should gather further feedbacks from a variety of business associations, foreign investors and foreign invested enterprises toward the proposal.
- ▶ In addition, MoF should exercise further quantitative assessment on the impacts of such proposal to the business and manufacturing activities of the enterprises.
- ▶ Lastly, there should be an intensive analysis surrounding the alternatives options proposed by MoF if Article 35 is amended, such as feasibility study reports on the Enterprise Processing Export (EPE) conversions for tri-party transactions, pros and cons analysis for key stakeholders (e.g., state, businesses and consumers) in each alternative option.

MoIT's opinion in the Official Letter No. 8739/BCT-XNK on 7 December 2023

- ▶ MoIT ruled that in accordance with Decree 90/2007/ND-CP (Decree 90), "foreign traders having no presence in Vietnam" are limited to do business within the scope of export trading right (i.e. the right to purchase goods in Vietnam for export) and import trading right (i.e. the right to import goods from foreign countries into Vietnam for sale to traders that have the right to distribute those goods in Vietnam) if being licensed to do so.
- ▶ Other business activities outside the above scope are not allowable to be conducted by "foreign traders having no presence in Vietnam".

Our quick notes

- ▶ For the time-being, the Vietnamese authorities are still in further discussion on how to treat the OTS export and import transactions and we will keep businesses posted on the progress in next year 2024.
- ▶ Businesses should continually monitor the progress on this policy change to have appropriate actions and decisions.

Contact

Hanoi office

Huong Vu | General Director

EY Consulting Vietnam Joint Stock Company
huong.vu@vn.ey.com

Hung Khanh Le

Director | Indirect Tax - Global Trade

EY Consulting Vietnam Joint Stock Company
hung.khanh.le@vn.ey.com

Japanese Business Services (JBS)

Takaaki Nishikawa | Director

Ernst & Young Vietnam Limited
takaaki.Nishikawa@vn.ey.com

Korean Business Services (KBS)

Kyung Hoon Han | Director

Ernst & Young Vietnam Limited
kyung.hoon.han@vn.ey.com

Ho Chi Minh City office

Robert King | Indochina Tax Leader

robert.m.king@vn.ey.com

Anh Tuan Thach

Partner | Tax Consulting

EY Consulting Vietnam Joint Stock Company
anh.tuan.thach@vn.ey.com

Japanese Business Services (JBS)

Takahisa Onose | Partner

Ernst & Young Vietnam Limited
takahisa.onose@vn.ey.com

Korean Business Services (KBS)

Phil Choi | Director

Ernst & Young Vietnam Limited
phil.choi@vn.ey.com

Chinese Business Services (CBS)

Owen Tsao | Director

Ernst & Young Vietnam Limited
owen.tsao@vn.ey.com

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