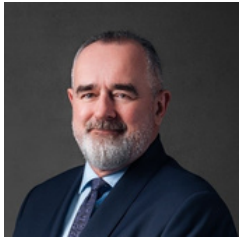




Proposed Abolition of the On-the-Spot Export and Import Customs Clearance Procedures

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Vietnam's on-the-spot (**OTS**) export and import customs clearance procedures which are regulated under Article 35, Decree No. 08/2015/ND-CP of the Government dated 21 January 2015 (**Decree 08**) have been widely used and have played an important role in the trade processing models of many Vietnamese manufacturers and foreign traders.

Recently via various official letters, the General Department of Customs (**GDC**) has submitted a proposal to the Ministry of Finance (**MOF**) and other relevant authorities to abolish the provision at Point c, Clause 1, Article 35 of Decree 08 (**Point C**) with respect to the on-the-spot export and import customs clearance procedures.



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At the end of August 2023, the MOF submitted Official Letter No. 9133/BTC-TCHQ (**OL 9133**) reporting to the Government Office with respect to the assessment of the implementation of the regulations on the OTS export and import transactions. The OL 9133 also sets out alternative options for the relevant enterprises' consideration in the event that Point C should be amended.

The abolition of Point C will likely result in the elimination of all OTS tripartite transactions under Point C whereby goods are sold by a local Vietnamese entity to a foreign entity having no presence in Vietnam, but the same goods will be directly delivered to another local Vietnamese entity under the instruction of the foreign entity. The MOF proposed that a transition period of one (1) year should be put in place before the abolition comes into effect with the condition that the foreign entity must not have a presence in Vietnam.

For the avoidance of doubt, the two (2) remaining transaction types under Points a and b, Clause 1, Article 35 are still effective and workable for toll manufacturing and export processing enterprises (**EPE**) related transactions.

The MOF also proposed alternative options for enterprises' consideration when Article 35 of Decree 08 is amended including applying direct sale-purchase transactions between local entities, use of bonded warehouses, or converting the local entity into an EPE company.

Enterprises are advised to assess the potential tax and customs implications resulting from the MOF's proposal above. The implications might, among others, include the payment of additional customs duties on imported materials, the changes in VAT declaration position (from refundable to payable), transfer pricing, and foreign currency collection.

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