

New Customs regulation: Decree 18/2021/ND-CP

Integrated International Tax

Decree 18 guiding the Law on Export and Import Duties

On 11 March 2021, the Government issued Decree 18/2021/ND-CP ("**Decree 18**") providing amendments to Decree 134/2016/ND-CP dated 01 September 2016 guiding the Law on Export and Import Duties. Decree 18 entered into force from 25 April 2021.

Notable technical points under Decree 18 and common customs issues observed are summarized below with suggested solutions:

1. Import duty exemption

1.1 Goods imported for export processing

- Exemption case: Decree 18 stipulates clearly the case of import duty exemption applied for imported goods for processing export goods. In which, export goods include processing products (i) exported to overseas or to non-tariff areas (ii) on spot exported to organization or individual in Vietnam as requested by the processing hirer.
- The basis to determine the eligibility for duty exemption:
 - The taxpayer or processor hired by the taxpayer (i) has the ownership or the right to use the processing facility and equipment in the facility in Vietnam territory and (ii) has submitted the notification of processing/re-processing facilities & contracts and its annexes to the Customs authority. And, in case these documents are not submitted on time, the taxpayer shall subject to administrative penalties.
 - While the processor sent partially/ all imported goods or the semi-finished goods made from those goods to other entities located in Vietnam territory for re-processing, then received the processed semi-finished goods/ finished goods for export purpose, the initially imported goods are exempted from import duty.

If the re-processing entities located in non-tariff areas/ overseas, the imported goods or the semi-finished goods sent to re-processing would be exempted from export duty. However, the re-processed goods import back to Vietnam have to pay import tax as per prevailing regulation.
- Handling scraps: Scraps and discarded products, incurred from the processing procedure, changing usage purpose to domestic use shall be entitled to import duty exemption and the taxpayer is not required to conduct customs procedure. However, the value-added tax, special sale tax, and environmental protection tax (if any) are requested to declare and pay as per prevailing regulation.

1.2 Goods imported for export manufacturing

- Exemption case: Decree 18 adds in one case that the imported goods for export manufacturing purpose that are allowed to destroy in Vietnam and had been destroyed, are eligible for import duty exemption scheme.
- The basis to determine the eligibility for duty exemption:

- The goods imported for export manufacturing, which being sent to re-processing entities in Vietnam territory, are only qualified for import duty exemption:
 - Partially or all of goods are assigned for local processors, then receives the semi-finished products for further manufacturing into finished exports;
 - The taxpayer has to manufacture imported goods first, then assign partially or all semi-finished products to local processor. After that, the re-processed goods could be exported/ further manufacturing for export.
 - Partially of goods are assigned for local processors, then received the finished products for export. The taxpayer still has to self-manufactured the remaining part of imported goods.
- In case (i) the goods imported or (ii) semi-finished goods wholly produced from those imported materials are sent to processor in non-tariff area/ overseas with applying the similar practice of the above cases would be exempted from export tax. However, the re-processed goods import back to Vietnam have to pay import tax as per prevailing regulation.

2. Amendments and supplementary provisions on duty refund scheme

- Refund scheme for imported goods that must be re-exported:

Decree 18 provides the possible options of the imported goods that must be re-exported, including

 - Exporting for returning the imported goods to the owners;
 - Exporting the imported goods to overseas; or
 - Exporting the imported goods to the non-tariff areas for consumption therein.
- Duty cancellation: New provision is supplemented in accordance with the applied cases, application procedures and submission process for further reference.

3. Supplementary provision on the conditions for customs supervision, inspection and application of tax policies for exporting processing enterprises (“EPE”) being the non-tariff area

- Decree 18 provide the Customs inspection and supervision requirements for EPEs being the non-tariff area, including:
 - Have hard fence surrounding EPEs to separate EPEs from other areas; and gates/doors in order to ensure the delivery of goods can only be carried out through the gates/doors;
 - Set up camera systems (run 24/24 hours) at the entrances/exits to record goods in and out of EPEs, and storage areas. In addition, the camera system shall be directly connected to local Customs in-charge and the data recorded are stored at the Company’s location for at least 12 months;
 - Have systems to manage the not-subject to import duty goods, and report input-output-balance of inventory used for export production as required by Custom laws.
- It is also highlighted that EPE which is the non-tariff area, satisfied with the above conditions must send a written notification to the Customs Sub-department in charge within one (1) year since the effective date of this Decree (i.e. 25 April 2021). This action will enable Customs authority to re-check the requirements as prescribed regulation.

Common Customs Issues

Based on our viewpoints, typical areas of scrutiny faced by enterprises about updated points of import and export duty under Decree 18 include:

- The application of import duty exemption scheme for the imported goods for export processing/ manufacturing purposes;
- The additional obligation of the processor in ownership/ have right to use the equipment in processing facility and in the submission of relevant the processing contracts within the required timeline;
- If the Company had been imposed tax under export manufacturing scheme due to re-processing, they can get the import duty and VAT refund in case now those goods satisfy requirements for exemption scheme under Decree 18; and
- The new inspection and supervision requirements for enterprises to obtain EPE status and EPE’s tax policy have to be fulfilled.

How KPMG can help

We can assist you in resolving the issues incurred from new guidance regarding import/ export duty as abovementioned by:

- Review a business model, especially when the importer intends to send import goods to re-process, in order to address the appropriate duty exemption scheme applied for the imported/ exported goods ;
- Provide comments on the contemplated business model of new entrants who are processors about their responsibilities in accordance with the Vietnamese customs regulations; or
- Advise on the duty refund possibility and refund procedure in case the Company had been imposed Customs duty on imported goods for export manufacturing then sent to local vendor for further processing; and
- Support with reviewing or evaluating the Customs requirements for obtaining EPE status and notice the person in charge of the necessary steps needs to be conducted for maintaining that position.

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