

Refined customs management for incentivized investment projects during ownership transitions

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This alert outlines recent instructions of customs authorities for incentivized investment projects that undergo ownership changes.

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The General Department of Customs (GDC) has received recent reports from various provincial and municipal customs departments indicating challenges associated with the change of ownership within incentivized investment projects. In response to these concerns, the GDC has issued Official Letter No. 3747/TCHQ-TXNK dated 6 August 2024 (OL 3747), which outlines guidelines and directives regarding customs procedures and the requisite actions to be taken in such circumstances.

Import Duty Exemption for Incentivized Investment Projects

- ▶ Goods imported to form the fixed assets of incentivized investment projects are exempt from import duties, as per Clause 11, Article 16 of the Law on Export and Import Duties No. 107/2016/QH13, and Article 14 of Decree No. 134/2016/ND-CP (Decree 134), which is amended and supplemented by Decree No. 18/2021/ND-CP (Decree 18).
- ▶ Throughout the execution of these projects, investors are entitled to modify objectives, transfer ownership (partially or entirely), merge or split projects, and utilize land use rights and assets on land for capital contribution, business establishment, or business cooperation, in compliance with Clause 1, Article 41 of the Investment Law No. 61/2020/QH14. The tax incentive scheme remains applicable provided the requisite conditions are maintained.

Guidelines for Ownership Transition of Incentivized Investment Projects

- ▶ OL 3747 outlines circumstances under which ownership transition may occur, including:
 - ▶ Transferring assets for business establishment or for capital contribution
 - ▶ Merging, splitting, or consolidating projects
 - ▶ Converting the legal form of a business, etc.
- ▶ In these cases, the GDC requests provincial customs departments to facilitate an official meeting with both the original and new project owners to clarify:
 - ▶ Documentation pertaining to project ownership transition
 - ▶ List of duty-exempt goods and their import customs declarations
 - ▶ Transfer of rights and obligations related to the duty-exempt goods, e.g., partial/full transfer, timing of the transfer, etc.
- ▶ The new project owner is then responsible for using the duty-exempted goods for the intended purpose of the incentivized project and must report the usage status to customs authorities annually, as stipulated in Clause 7 of Article 30 and Clause 1 of Article 31a of Decree 134 (amended and supplemented by Decree 18).
- ▶ Failure to attend the required meeting with customs authorities or evidence of violation or specific risk indicators will prompt an inspection by customs authorities, as prescribed in Clause 4, Article 31a of Decree 134 (amended and supplemented by Decree 18).

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