
This Alert is to update the latest developments on on-the-spot (OTS) transactions

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Recent development on the procedures for on-the-spot export and import transaction

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As outlined in our previous Customs & Global Trade Alert publications, the proposed abolishment of the tri-party arrangement as described in Article 35 of Decree No. 08/2015/NĐ-CP, which pertains to OTS export and import procedures, remains under government review. The term "tri-party arrangement" refers to a transaction where goods are sold or purchased between a Vietnamese company and a foreign entity having no presence in Vietnam, with delivery to or receipt from another Vietnamese company as directed by the foreign entity.

Recently, on 28 May 2024, the Ministry of Finance (MoF) submitted Official Letter No. 5436/BTC-TCHQ (OL 5436) to the Deputy Prime Minister. This letter provides further analysis based on insights gathered from relevant ministries regarding the proposal.

In the interim, the Ministry of Industry and Trade (MoIT) and the General Department of Customs (GDC) have issued several official letters to address business concerns related to this issue. These communications are intended to help businesses navigate the complexities while awaiting the government's final decision.

Key notes from the OL 5436/BTC-TCHQ of the MOF to the Deputy Prime Minister

- ▶ Quantitative assessment of the proposal's impact: The MOF reports that the proposed abolishment of the tri-party arrangement in Article 35 could potentially reduce the average handling time by VND11.54 million hours and costs by VND4,121.90 billion per year by eliminating the need for OTS export and import customs procedures.
- ▶ The MOF also highlights a concern that abolishing the tri-party arrangement could lead to an issue with import duty refunds amounting to VND2,252.3 billion. This is due to the lack of a legal basis for duty refunds on materials that change their intended export production use but are ultimately included in exported goods at a later stage.
- ▶ In terms of alternative business arrangements in case the tri-party arrangement is discontinued. The MOF affirms that utilizing bonded warehouses could serve as an interim solution to avoid business disruptions, though this may incur additional warehouse costs, until the potential regulatory changes take effect.

Additional relevant communications regarding this matter

- ▶ *Import trading and export trading right of a foreign entity having no presence in Vietnam:* In a letter No. 161/XNK-THCS dated 1 March 2024 (OL 161), the MOIT ruled that conducting the tri-party arrangement does not fall within the scope of export trading right and import trading right outlined in Decree 90/2007/ND-CP, applicable to foreign traders having no presence in Vietnam.
- ▶ *Documents and procedures to verify the “no presence in Vietnam” status:* The concept of “foreign traders having no presence in Vietnam” is explicitly defined under the Law on Foreign Trade Management No. 05/2017/QH14 (Law 05) and Decree 90/2007/ND-CP (Decree 90). However, the current regulations lack guidelines on the necessary documentation, and methodologies for validating the presence of a foreign entity.

Through Official Letter No. 2643/TCHQ-GSQL dated 10 June 2024 (OL 2643), the GDC requests the MOIT and the Ministry of Planning and Investment (MPI), to provide the implementation guidelines on this matter. On 22 July 2024, the MOIT responded with Letter No. 599/XNK-THCS, stating that the concept of 'no presence in Vietnam' as defined in Law 05 and Decree 90 is specifically applied to regulations concerning import trading/export trading rights and is not intended for other purposes. Furthermore, the MOIT recommends that the GDC should establish separate concepts and necessary documentation to verify the “no presence in Vietnam” status for customs purposes as stipulated in Decree No. 08.

- ▶ *VAT refund eligibility for the unqualified OTS exports:* In a letter No. 2760/TCHQ-GSQL dated 14 June 2024 (OL 2760) to the General Department of Taxation (GDT), the GDC affirms that the tri-party arrangement that was approved from the customs perspective, but failed to satisfy the Point c, Clause 1, Article 35 of Decree 08, these customs declarations are not considered as for VAT refund eligibility.

Our notes

- ▶ Business should continue to monitor the progress on this policy change to have appropriate actions and decisions. This proactive approach will enable businesses to adapt their strategies and operations effectively, thereby minimizing any potential disruptions and maximizing opportunities that may arise from the changes in policy.
- ▶ We will keep businesses informed of the latest updates on this matter in our forthcoming alerts.

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