

Customs & Global Trade Updates

February & March 2024

This update highlights the following matters:

- ▶ Amending rules of origin under the Vietnam and Eurasian Economic Union Free Trade Agreement (VN-EAEU FTA)
- ▶ Amending rules of origin under the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA)
- ▶ Circular amends the regulations on the origin of goods
- ▶ List of exported mineral types and quality standards under management of the Ministry of Industry and Trade (MoIT)
- ▶ Guidance on the exportation and importation of hydrofluorocarbon (HFC)
- ▶ The State inspection of the quality of goods circulating on the domestic market
- ▶ The 3rd draft Law on Value Added Tax (VAT) (amended)
- ▶ Official Letters (OLs) provide guidance on:
 - ▶ Documentation for on-the-spot (OTS) exported goods delivered under the designation of a foreign trader
 - ▶ Customs procedures to bring goods into an Enterprise Processing Export (EPE) for a construction project
 - ▶ Tax policy for materials imported for export production
 - ▶ Timeline and procedures for inspection after duty refund
 - ▶ Materials imported for export processing without having a processing plant in Vietnam
 - ▶ Duty rate for goods imported then re-exported to EPEs
 - ▶ Customs procedures and tax policies where domestic enterprise lease goods to an EPE

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Amending rules of origin under the VN-EAEU FTA

On 15 January 2024, the MoIT issued Circular No. 01/2024/TT-BCT (Circular 01/BCT) amending some articles in Circular No. 21/2016/TT-BCT (Circular 21) dated 20 September 2016 of the MoIT prescribing regulations on the rules of origin under the VN-EAEU FTA.

Circular 01/2024/TT-BCT outlines the following notable points:

- ▶ Replacing Appendix II - Products Specific Rules (PSR) of Circular 21 with the Appendix enclosed in Circular 01/BCT.
- ▶ Certification and inspection of Certificate of Origin (C/O) shall follow the guidance in Appendix I of Circular 21, Decree No. 31/2018/ND-CP dated 8 March 2018 of the Government which provides guidelines for the Law on foreign trade management in terms of the origin of goods and other relevant regulations.
- ▶ For exporting shipments delivered from 1 October 2023:
 - ▶ C/O Form EAV issuance authorities: retrospectively issue C/O Form EAV in accordance with the PSR stated in the enclosed Appendix in Circular 01/BCT.
 - ▶ Customs authorities: accept C/O Form EAV issued from 1 October 2023 following the PSR with HS2022 version. C/O inspection procedures allowing shipments to claim special preferential tariff under VN-EAEU FTA in accordance with the FTA legal framework and other relevant regulations.

Circular 01/BCT enters into force from 1 March 2024. Please refer to the Circular for further details.

Amending rules of origin under the AANZFTA

On 15 January 2024, the MoIT issued Circular 02/2024/TT-BCT (Circular 02) amending some articles in Circular No. 31/2015/TT-BCT (Circular 31) dated 24 September 2015 of the MoIT on implementing rules of origins under the AANZFTA.

Circular 02 replaces Appendix II - the PSR of Circular 31 with Appendix enclosed in Circular 02.

Circular 02 takes effect from 1 March 2024. Please refer to the Circular for further details.

Circular amending the regulations on the origin of goods

On 29 December 2023, the MoIT issued Circular No. 44/2023/TT-BCT (Circular 44) amending some articles in Circular No. 05/2018/TT-BCT (Circular 05) dated 3 April 2018 of the MoIT promulgating regulations on origin of goods.

Circular 44 makes the following notable points:

- ▶ Replacing Appendix I - PSR of Circular 05 with Appendix I enclosed in Circular 44.
- ▶ Replacing Appendix II - A declaration of exported goods satisfying "WO" criteria, using materials purchased domestically, without a VAT invoice of Circular 05 with Appendix II enclosed in Circular 44.

- ▶ Amending Clause 1, Article 9 of Circular 05 - Replacing the phrase "from Point g to point I, Clause 1, Article 7 of this Circular" with "from Point g to Point I, Clause 1, Article 8 of this Circular" in relation to guidance on supplementing the declaration of C/O Form B of Vietnam.

Circular 44 takes effect from 15 February 2024. Please refer to the Circular for further details.

List of exported mineral types and quality standards under the management of the MoIT

On 29 December 2023, the MoIT issued Circular No. 45/2023/TT-BCT (Circular 45) amending Circular No. 23/2021/TT-BCT dated 15 December 2021 of the MoIT which regulates the List of exported mineral types and quality standards administrated by the MoIT.

Circular 45 makes following notable points:

- ▶ Exported minerals for these purposes are minerals that have legitimate origin, and have undergone processing activities included in the List of mineral types, and met the quality standards thereof, including:
 - ▶ Domestic origin minerals as listed in Appendix 1 of Circular 45
 - ▶ Processed minerals imported as listed in Appendix 2 of Circular 45
 - ▶ Processed minerals imported under a toll-manufacturing contract with a foreign trader, of which post-processing classification and quality standards are pursuant to the provisions of a toll manufacturing contract, according to Article 39 in Decree No. 69/2018/NĐ-CP dated 15 May 2018 of the Government
- ▶ For exported minerals that were originally imported: no later than 30 days from the date of entering the buy-sell contract with a foreign trader and before importation, the enterprise must prepare a report on the importation, processing and exportation plan using a template in Appendix 3 of Circular 45 and submit the report to the MoIT and the managing Department of Industry and Trade (DoIT) where the export processing activities take place.
- ▶ If there is a mineral export activity, the enterprise must submit a report to the MoIT (Department of Industry), the GDC, the managing DoIT using Form 1 enclosed in Appendix 4 of Circular 45. The submission deadline is the 15th date of the first month of the following quarter. In addition, the enterprise is also required to submit, on an ad-hoc basis, where requested by competent authorities.
- ▶ The reports can be directly submitted to the MoIT and the managing DoIT at the clerical office, by post, or via email of the Department of Industry (CucCN@moit.gov.vn) or via email registered with the DoIT.

Circular 45 comes into force from 15 February 2024. Please refer to the Circular for further details.

Guidance on the exportation and importation of HFCs

On 27 December 2023, the MoIT issued OL No. 1115/XNK-TLH providing guidance on the administration of exportation and importation of controlled greenhouse gases, which are HFCs, as follows:

- ▶ The administration of HFCs imports and exports following guidance in Circular No. 05/2020/TT-BCT dated 16 March 2020 will last until 31 December 2023. From 1 January 2024, the administration is regulated by Decree No. 06/2022/NĐ-CP dated 7 January 2022 (Decree 06).
- ▶ Decree 06 regulates the administration roadmap and elimination of HFCs in different phases based on the percentage of total national consumption to baseline consumption and baseline production levels. The Minister of Natural Resources and Environment will notify the baseline consumption and production levels and periodically state the total national consumption.
- ▶ Quotas shall be allocated annually to organizations, but not exceeding the total national consumption of HFCs. The annual allocation of production and import quotas of HFCs to organizations is determined by the requirement of quota management, consumption demand and the average consumption of the organization in the last three years.

Please refer to the Decree 06 for further details.

The State inspection of quality of goods circulating in the domestic market

On 18 January 2024, the Ministry of Science and Technology (MoST) issued Circular 01/2024/TT-BKHCN (Circular 01/BKHCN) regarding the State inspection of quality of goods circulating in the Vietnam domestic market, including goods that are transported, displayed, promoted, marketed and stored during the sales and purchase of goods (inclusive of goods traded under e-commerce activities).

This regulation is not applicable for goods which are transported from the border gate to the storage warehouse of the importer or awaiting customs clearance inspection and products of national defence and security.

- ▶ The State inspection is conducted according to an annual plan or surprise inspection.
- ▶ Inspection content: goods information (i.e., labels, mandatory enclosed documents, applicable disclosure standards, conformity marks, barcode, origin traceability), quality of goods (i.e., examining the matching of technical specifications, applicable disclosure standards and other relevant contents), the consistency between information published on e-commerce sites and the physical goods (applied to e-commerce business).
- ▶ After detecting goods circulating in the domestic market that violate the quality standards, apart from imposing administrative penalties and remedial measures on the domestic seller, the inspection authority also conducts a physical inspection at the production facilities of the manufacturer, and the importer, or reports it to other relevant competent authorities to conduct inspection in accordance with the prevailing regulations.

Circular 01/BKHCN takes effect from 3 March 2024. For cases which have been under inspection before the effective date of this Circular shall continue following the provisions in Circular No. 26/2012/TT-BKHCN dated 12 December 2012 and Circular No. 12/2027/T-BKHCN dated 18 September 2017 of the MoST.

Please refer to Circular 01/BKHCN for further details.

The 3rd draft Law on VAT (amended)

Upon receiving opinions from various Ministries, State management bodies and enterprises in regard to the project of Law on VAT (amended) on 1 March 2024, the Ministry of Finance (MoF) issued OL No. 2239/BTC-CST attaching a Summary of collected explanations, opinions and an updated draft Law on VAT (the draft VAT Law).

The draft VAT Law outlines some notable points as follows:

- ▶ Increasing the threshold of annual review for individuals and business households to be exempt from VAT from VND100 million to VND150 million
- ▶ Adjusting the VAT rates applicable for certain goods and services
 - ▶ Previously exempted from VAT, now subject to 5% VAT: fertilizer products, fishing vessels, specialized machinery and equipment used for agricultural production, etc.
 - ▶ Previously subject to 5% VAT, now subject to 10% VAT: forest products which have not undergone processing; sugar, substances (by-products) used in sugar production includes: molasses, bagasse, press mud; specialized equipment and tool used in teaching, researching and science experimenting, etc.
- ▶ VAT rate of 0%
 - ▶ Adding the following objects to the “exported goods” category: construction/installation taking place overseas, or inside non-tariff zones; goods sold in quarantine areas for individuals (foreigner or Vietnamese) who have completed immigration customs procedures, goods sold in duty-free stores.
 - ▶ Narrowing down the “exported services” category to services provided to foreign organizations and individuals, including rental of vehicles for usage outside Vietnam territory; international transportation services and aviation and maritime services provided directly for international transportation purposes.
 - ▶ Abolishing the category of “services consumed outside Vietnam, inside non-tariff zone”. Accordingly, these services might be subject to a VAT rate of 10%.
- ▶ Adding provisions on claiming input VAT, which requires certain documentations as follows:
 - ▶ VAT invoice of goods, services purchased; or proof of VAT payment at importation stage or VAT payment on behalf of a foreign trader.

- ▶ Proof of a non-cash payment for input goods, services of which value is VND5 million and above (instead of VND20 million threshold per current regulations).
- ▶ For goods and services exported: in addition to the documentation requirements of the prevailing regulations, the draft VAT Law adds packing lists, bills of lading and cargo insurance documents to the list of mandatory documents.
- ▶ Amending the instances where the omission of input VAT in the past is permitted to be declared in the occurring period and before tax authority announces any decision on tax inspection, or tax audit.
- ▶ Amending provisions on VAT refunds:
 - ▶ Expanding cases, where taxpayers applying the VAT credit method, are eligible for VAT refunds as follows:
 - ▶ Business establishments that only produces good and provide services subject to the 5% VAT rate and have accumulated creditable input VAT exceeding VND300 million after a twelvemonth period or four quarters.
 - ▶ Business establishments having an investment project (either new investment projects or expansion investment projects), during the investment stage, that complies with the investment laws and regulations are eligible for a VAT refund provided that the accumulated creditable input VAT exceeds VND300 million. The timeline of applying for a VAT refund is one year from the date the investment project or investment phase/investment component is completed.
 - ▶ Removing the provision of “no VAT refund” for investment projects by business establishments whose charter capital is not fully contributed; rejection of VAT refund upon ownership conversion, enterprise conversion, merger, consolidation, splitting, separation, and business liquidation.
 - ▶ Removing the requirement of assessing the 51% ratio for natural resources and minerals for VAT refund purposes. Instead, the Government shall promulgate a List of natural resources and minerals exploited and transformed into other products which are eligible/non-eligible for a VAT refund.

For details, please see the draft VAT Law.

Some guidance provided in the form of OLs:

No.	Subject	Content
10480/CTHN-TTHT Dated 4 March 2024	Documentation for OTS exported goods delivered under the designation of a foreign trader	If goods are sold under a contract with a foreign trader, without a presence in Vietnam, and are designated to be delivered to another Vietnamese enterprise, the OTS export customs procedure is allowed in accordance with Clause 1, Article 86, Circular No. 38/2015/TT-BTC (Circular 38) dated

No.	Subject	Content
		<p>25 April 2015 of the MoF promulgating regulations on customs procedures; customs inspection, supervision; import - export duty and tax management of imports, exports.</p> <p>If the physical goods are transported to the border gate or the place of conducting export procedures, the goods delivery note cum internal transportation document can be used, which presents the following information:</p> <ul style="list-style-type: none"> ▶ Name of the buyer is the consignee ▶ Address of the buyer is the warehouse location of the consignee ▶ Name of the seller is the exporter ▶ Address of the seller is the location of the warehouse issuing goods and means of transport ▶ Tax amount, tax rate and total billable amount are not required
<p>788/TCHQ-GSQL Dated 27 February 2024</p>	<p>Customs procedures to bring goods into an EPE for a construction project</p>	<p>In relation to the customs procedures applicable to supplies imported into an EPE for a construction project, the GDC has stated that:</p> <ul style="list-style-type: none"> ▶ Whether or not customs procedures will be conducted is at the discretion of the enterprises, according to prevailing regulations. ▶ For ventilation and air conditioning systems, electrical systems, water supply and drainage systems, and PCCC systems, there is no specific regulation classifying such items as consumable goods, so there is not sufficient legal basis to determine applicable customs procedures. The MoF and GDC do not have the authority to provide guidance. ▶ Goods and services exported to an EPE for construction projects shall apply 0% VAT rate if they satisfy the conditions under the prevailing VAT regulations. Requirements on customs declarations for claiming creditable input VAT

No.	Subject	Content
		and VAT refund of exported goods, services, are prescribed under Clause 2, Article 16 of Circular No. 219/2013/TT-BTC dated 31 December 2023 issued by the MoF.
706/TCHQ-TXNK Dated 22 February 2024	Tax policy for materials imported for export production	<p>Where materials and supplies were imported for export production and the finished goods were not exported and import duty was not paid before 1 September 2016:</p> <ul style="list-style-type: none"> ▶ They are not subject to import duty exemption according to Clause 2, Article 21, Law on import and export duty No 107/2016/QH13 dated 6 April 2016 (Law on import and export duty). ▶ They are not subject to duty refund according to Point d, Clause 1, Article 19, Law on import and export duty.
705/TCHQ-TXNK Date 22 February 2024	Timeline and procedures for inspection after duty refund	<ul style="list-style-type: none"> ▶ For a customs dossier which is entitled to “duty refund first, customs inspection later”, the inspection is carried out based on risk management principles. The inspection timeline is determined right after the date of issuing the Decision on duty refund. In particular: <ul style="list-style-type: none"> ▶ Within 10 years from the issuance date of duty refund decision: applicable to decisions which were issued in accordance with Law on Tax administration No. 78/2006/QH11 that takes effect (i.e., from 1 July 2007 to 1 July 2020). ▶ Within five years from the issuance date of duty refund decision: applicable to decisions issued in accordance with Law on Tax administration No. 38/2019/QH14 that takes effect (i.e., from 1 July 2020 till present). ▶ Every month, the customs sub-departments who issued decisions on duty refunds must

No.	Subject	Content
		<p>report to city and provincial customs departments for post-refund inspection.</p> <ul style="list-style-type: none"> ▶ The customs authority issues a Decision on inspection at the premise of the taxpayer using Form 07/TXNK - Appendix I enclosed in Circular No. 06/2021/TT-BTC (Circular 06) dated 22 January 2021 of the MoF and follows the post customs clearance audit procedures.
527/TCHQ-TXNK Dated 2 February 2024	Materials imported for export processing without having a processing plant in Vietnam	<p>For materials imported for export processing under a toll-manufacturing contract, one of the conditions for applying import duty exemption is that "the taxpayer" or "enterprise, individual who conducts the re-processing activities for the taxpayer" has the ownership or the right to use the processing plant in Vietnam (Point b, Clause 2, Article 10 in Decree 134 amended by Clause 4, Article 1, Decree No. 18/2021/NĐ-CP dated 11 March 2021 of the Government).</p> <ul style="list-style-type: none"> ▶ The current regulations do not require both abovementioned groups to have ownership over or the right to use the processing plant. ▶ If neither group owns nor has the right to use the processing plant, it does not satisfy condition for applying import duty exemption. ▶ If imported materials are partially or entirely delivered to a third-party enterprise, which meets the requirements on processing facilities, for re-processing and the finished goods are exported, such materials are eligible for import duty exemption.
428/TCHQ-TXNK Dated 26 January 2024	Duty rate for goods imported then re-exported to EPEs	<ul style="list-style-type: none"> ▶ If goods imported and import duty obligations are fulfilled, but then re-exported to overseas or exported to the non-tariff zone and used inside the non-tariff zone, the paid amount of import duty shall be refunded while no export duty is applied.

No.	Subject	Content
		<ul style="list-style-type: none"> ▶ The customs procedures with regards to the above practice are stated in Article 13, Circular 06. ▶ The enterprise declares the code of tax exemption, tax deduction, not subject to tax following guidance in Circular 38 amended in Circular No. 39/2018/TT-BTC dated 20 April 2018 of the MoF.
<p>335/TCHQ-TXNK Dated 14 January 2024</p>	<p>Customs procedures and tax policies where a domestic enterprise leases goods to an EPE</p>	<p>The GDC responded to questions on the customs procedure and tax policies applicable where a domestic enterprise renders alarm monitoring services to an EPE:</p> <ul style="list-style-type: none"> ▶ Customs procedures: where the alarm monitoring services comprise of machine and equipment which the domestic enterprise lease to an EPE to perform work during a certain period of time, the domestic enterprise performs a temporary export for re-import procedures, while the EPE performs a temporary import for re-export procedures. ▶ Customs valuation: <ul style="list-style-type: none"> ▶ For temporary export/temporary import customs procedures: the customs value is the residual value of the goods at the time they are leased plus the relevant costs that a domestic enterprise paid to transport the goods to the EPE (i.e., delivery cost and insurance fee). ▶ For re-import/re-export customs procedures: the customs value is the net book value of the goods based on accounting records of the domestic enterprise upon return by the EPE. ▶ Tax policies: goods under temporary export for re-import within a certain duration are eligible for duty exemption according to Clause 9, Article 16, Law on import and export duty.

Contacts

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
EY Consulting Vietnam Joint Stock Company
robert.m.king@vn.ey.com

Anh Tuan Thach
Partner | Indirect Tax - Global Trade
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

China Business Services (CBS)
Owen Tsao | Director
Ernst & Young Vietnam Limited
owen.tsao@vn.ey.com

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APAC No. 16010401

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