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Vietnam

1. **Stricter Control on Representative Offices and Branches of Foreign Merchants in Vietnam**

On 25 January 2016, the Government issued Decree No. 07/2016/ND-CP (“**Decree No. 07**”) which takes effect on 10 March 2016 to replace Decree No. 72/2006/ND-CP with respect to representative offices (“**RO**”) and branches of foreign merchants in Vietnam.

The most notable changes provided in Decree No. 07 are as follows:

A. Limitation to the nationality of foreign merchants

A foreign merchant is permitted to establish an RO/branch in Vietnam in accordance with Vietnam’s commitments in international treaties of which Vietnam is a member. If the foreign merchant does not belong to a country or territory participating in an international treaty of which Vietnam is a member, establishment of the RO/branch requires an approval from the ministry level. This may cause difficulties for foreign merchants that are from countries or territories which are not a member of the treaties of which Vietnam is a member.

B. Narrowing the scope of activities of ROs

Decree No. 07 narrows down the scope of activities of ROs. Previously, under Decree No. 72, ROs were permitted to perform the activity of “monitoring and speeding up the performance of the contracts signed between the foreign merchant and the Vietnamese partners or which or related to Vietnam market”. However, Decree No. 07 removes this activity from the permissible scope of activities for ROs. In practice and going forward, it remains to be seen as to what extent this will impact the activities of ROs.

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2. Fewer Requirements for Importing Used Machines and Equipment

On 13 November 2015, the Ministry of Science and Technology issued Circular No. 23/2015/TT-BKHCH (“**Circular No. 23**”) on the importation of used machinery, equipment and technology (“**Used Equipment**”). Circular No. 23 replaces Circular No. 20/2014/TT-BKHCH (“**Circular No. 20**”), which was criticized by industry representatives for hindering manufacturing investments in Vietnam.

Circular No. 23 removes the “remaining value” criteria of Circular No. 20, and now permits the importation of Used Equipment that:

- Is less than 10 years of age; and
- Complies with the National Technical Regulations (QCVN), or National Technical Standards (TCVN) of Vietnam, or otherwise meets the safety, energy saving and environment protection requirements set by the G7 countries.

Additionally, Circular No. 23 now provides an exemption from criteria (1) and (2) as above mentioned if the Used Equipment is listed in an approved foreign direct investment project application. This change is intended to facilitate the relocation of production machines and equipment to Vietnam by foreign investors.

Although the National Technical Regulations apply to all imports on mandatory basis, the wording of Circular No. 23 could be interpreted that Used Equipment listed on approved FDI project applications need not comply with these regulations - possibly creating a conflict with Vietnam’s goods quality regulations.

Circular No. 23 will take effect from 1 July 2016.

3. Importation of used IT products into Vietnam

On 29 October 2015, the Ministry of Information &

Communications ("**MIC**") issued Circular 31/2015/TT-BTTTT ("**E-waste Circular**") replacing Circular No. 11/2012/TT-BTTTT ("**Circular No. 11**") which promulgates a list of used IT products banned from importation into Vietnam. The intent of the E-waste Circular is to prevent the importation of harmful e-waste into Vietnam where it may be recycled in the informal economy and disposed of improperly, causing environmental harm.

Unless otherwise exempted, used IT products or parts listed in Circular No. 31 are banned from importation.

As from 15 December 2015, there are only the following two exemptions to the E-waste Circular's importation ban:

- Imports for scientific use; or
- Imports for processing, recycling, repair for foreign merchants (but must then be re-exported).

The MIC may approve or reject applications for these exemptions on a case-by-case basis.

As from 1 July 2016, scope of exemptions will expand. Pursuant to Decision No. 18/2016/QĐ-TTg of the Prime Minister promulgated on 6 May 2016 ("**Decision No. 18**"), in addition to the aforementioned exemptions, used IT products listed in Circular No. 31 may be imported into Vietnam for:

- Relocation of manufacturing equipment of an organization;
- Controlling, operating, or supervising the operation of, a part or entire manufacturing system;
- manufacturing or processing software products, IT business process outsourcing (BPO), data processing for foreign entities;
- Specialized usage purposes;

Used IT product re-imported into Vietnam after being repaired overseas, or refurbished products, spare parts which are no longer manufactured, being imported into Vietnam to perform repairing services for domestic users, are also permitted under Decision No. 18.

Further conditions (e.g. equipment age, re-export) also apply to the importation of used IT products in such exemption circumstances.

4. Promulgation of Law on Export and Import Duties 2016

On 06 April 2016, the National Assembly passed Law on Export and Import duties 2016, which shall take effect on 1 September 2016. As one of the four key issues of customs modernization, Law on Export and Import Duties 2016 is expected to establish a more competitive business environment in Vietnam under the context of accelerating roadmap for duty elimination following Vietnam's commitments in international trade treaties.

Certain key developments under Law on Export and Import duties 2016 include:

A. Duty exemption applicable to more goods, notably including:

- Raw material, supplies and accessories imported for export production under contract manufacturing, which are currently entitled to 275-day duty deferral;
- Goods for temporary import/export for following purposes:
 - Machines and equipment for repairing marine vessels and airplanes: Under current regulations, only spare parts and accessories of temporary import/export are entitled to duty exemption. The new Law expands duty exemption to also cover the machines and equipment of temporary import/exports;
 - Temporary imports/exports for repair and warranty;
 - Goods for trading business of temporary import/export (bank guarantee or deposit required);
- Fertilizer, pesticide which have not been domestically produced, subject to necessity appraisal of line ministries;
- Goods for non-commercial purpose including: samples, photos, films, alternative models for samples, advertising publication in small quantities;
- Goods are not domestically produced, which are imported directly for educational purposes.

B. Duty refund in the event of wrong declaration

The new Law has abolished the regulation that wrong declaration may be entitled to duty refund if such wrong declaration is conducted within 365 days from the date of detection. As such, taxpayers will no longer have chance to claim the overpaid duty if such mistakes are made by themselves.

C. Grace period of import duty payment

Privileged enterprises (under **Authorized Economic Operators Scheme**) are entitled to a grace period of up to 40 days in comparison with other taxpayers. As such, instead of paying duties before goods release, privileged enterprise may make payment no later than the 10th day of the month following the month of goods release or clearance.

5. Higher Taxable Base for Imported Goods under new regulations on Special Consumption Tax (Excise Tax)

The Government promulgated Decree No. 108/2015/ND-CP on 28 October 2015 (“**Decree No. 108**”) to implement the Law on Special Consumption Tax (“**SCT**”) which takes effect from 1 January 2016. Decree No. 108 effectively increases the taxable base for imported goods and tightens the margin in selling prices between manufacturers, importers and distributors.

Currently, SCT applies to cigarettes and tobacco products, alcohols, beer, passenger automobile, motorcycle of 125 cm³ cylinder capacity or more, airplanes, cruise ships, gasolines, air conditioning of up to 90,000 BTU, etc.

A. Increase of the taxable base of imported goods

Prior to the effectiveness of Decree No. 108, the taxable price of imported goods is the dutiable price plus import duty.

From 1 January 2016, however, imported goods, except for gasoline, will be subject to SCT at two stages. When goods are imported, they will be subject to SCT at the import stage which is assessed based on dutiable price plus import duty (“**import SCT**”). When importers sell the imported goods, SCT will be assessed again based on the selling price before value added tax, environmental tax (if any) and SCT (“**distribution SCT**”).

Effectively, imported goods, except for gasoline, will be ultimately subject to SCT based on the importers’ selling price. This reflects the Government’s aim to unify the taxable price for both imported goods and locally produced goods.

B. Tightening the margin in selling prices between manufacturers and distributors

Generally, the selling price of manufacturers/importers will be the taxable price at the distribution stage. According to

Decree No. 108, however, the taxable price will be subject to stricter margins than those in the current regulations, particularly:

For importers (except for automobiles under 24 seats and gasoline), manufacturers (except for automobiles under 24 seats) selling imported goods via their distributors, the taxable price is the selling price which must not be 7% lower than the average selling price of the distributors. This current margin is 10%.

For imported automobiles under 24 seats, the taxable price is the importers' selling price which must not be lower than 105% of the import cost. The import cost includes the dutiable price, import duty and import SCT.

For automobiles under 24 seats manufactured or assembled locally, the taxable price is the manufacturers' selling price which must not be 7% lower than the average selling price of the distributors. This current margin is 10%. The average selling price of distributors excludes prices for additional equipment or options as per customers' requests.

If the selling price of manufacturers/importers is lower than the stipulated margins, the taxable price will be determined by the tax authorities.

6. Vietnam - EU Free Trade Agreement

On 7 December 2015, the Vietnam-EU Free Trade Agreement (FTA) was officially signed, cementing an expansive free trade agreement deal that erases more than 99 percent of tariffs on goods traded between the two economies over a period of up to seven years.

Vietnam will liberalize 65% of import duties on EU exports to Vietnam at entry into force and the remaining duties will be eliminated due to the next ten years. EU duties will be eliminated over a seven year period.

The market will be opened for most of EU food products, i.e. wine, spirits and frozen pork meat will be liberalized after seven years and dairy products after a maximum of five years.

The EU will eliminate duties for some sensitive products in the textile and footwear sector. The EU has offered access to Vietnamese exports via tariff rate quotas (TRQs), because some sensitive agricultural products will not be fully liberalized. Furthermore, the agreement will contain an annex with provisions to address non-tariff barriers in the automotive sector.

Vietnamese exports of textile, clothing and footwear to the EU are expected to more than double in 2020 as a result of the FTA.

The agreement – called “a new model for trade policy with developing countries” – is the first the EU has concluded with a developing country.

Two-way trade between the two has tripled over the past decade to about \$30 billion.

7. Trans-Pacific Partnership Agreement

On 4 February 2016, The Trans-Pacific Partnership ("TPP") was officially signed. With the participation of 12 country members including Australia, Canada, Japan, Malaysia, Mexico, Peru, United States, Vietnam, Chile, Brunei, Singapore, New Zealand, the TPP opens an extensive market access for goods and services originating from country members.

TPP covers a wide range of issues, which also for the first time set forth the labor and environment issues in international trade activities in Vietnam.

The TPP's Rules of Origin is designed to promote the formation of an effective supply chains among country members.

For Vietnam, the TPP will open considerable opportunities as the United States is currently the largest trading partner for Vietnam's exports. Reduced import duties in the U.S. and Japan will benefit the country's apparel manufacturers. Vietnam's seafood industry will also benefit from the elimination of import taxes on shrimp, squid and tuna, now averaging 6.4 percent-7.2 percent.

8. ASEAN Framework Agreement on Services - New Package on Market Access

The ASEAN Framework Agreement on Services ("AFAS") was signed on 15 December 1995 in Bangkok, Thailand by the ASEAN Economic Ministers, with the objective of mandating progressive negotiations on the liberalization of trade in services. With the aim to establish an ASEAN Economic Community, specific packages of commitments with increasing market accessibility have been negotiated by ASEAN members. AFAS 9th Package is the latest package of commitments, which will become effective from 25 May 2016.

As compared to Vietnam's AFAS 8th Package, which was signed 5 years ago (the "8th Schedule"), as well as Vietnam's WTO commitments of trade in services, the 9th Package introduces the following key changes:

A. Further market access

New services are added to the 9th Schedule to open to investment of ASEAN investors.

Among those, certain services are not subject to any restriction including residential and non-residential property management services (CPC 82201 and 82202), and the services of leasing or rental furniture and household appliances (CPC 83203).

Other services such as rail transport supporting services (CPC 743) and services of maintenance and repair of road transport equipment (CPC 6112 + 8867) are subject to foreign ownership cap of 51%.

Some other newly added services are subject to 70% foreign ownership restriction: e.g., interdisciplinary R&D (CPC 853); R&D services on social sciences (CPC 852); and rental/leasing services without operator relating to ships (CPC 83103).

Notably, the 9th Schedule also includes primary education services (CPC 921), without any ownership restriction. However, Vietnam maintains certain restrictions regarding qualification requirements, and indicates no commitments regarding cross-border supply of these services.

The 9th Schedule also increases foreign ownership to 70% (as opposed to 49% or 51% under the 8th Schedule) for certain services such as road freight transportation (CPC 7123), tourist theme park, and packaging services (CPC 876). Notably, the 51% foreign ownership restriction previously imposed on rail freight transportation services under the 8th Schedule is now removed completely under the 9th Schedule.

Affirmative commitments are also included on cross-border supply of certain educational services: High education services (CPC923), adult education (CPC 924, and other education services (CPC 929 including foreign language training).

B. Removal of all references to the supply of services through presence of natural persons (Mode 4).

As Mode 4 commitments previously included in the 8th Package will be superseded by a separate set of commitments made by the Member States under the ASEAN Agreement on the Movement of Natural Persons when it comes into force, the 9th Package does not provide any commitment for Mode 4.