

# MONTHLY BULLETIN

## AUGUST 2023



## CUSTOMS-RELATED UPDATES

### ON-SPOT IMPORT AND EXPORT



## Updates on obstacles faced by foreign traders having representative in Vietnam regarding on-spot import and export

In recent times, the General Department of Customs and local Customs Departments have issued multiple explanatory documents regarding **the application of on-spot import and export in cases involving foreign traders who have representatives in Vietnam**. Failure to meet the conditions for on-spot import and export will directly impact the determination of VAT as well as pose challenges in customs procedures when conducting these activities.

Via this newsletter, we would like to provide updates on certain instructions and viewpoints from relevant authorities up to the present time. Accordingly, you should assess the impacts and effects on your business operations and seek consultation from the perspectives of experts and regulatory bodies concerning on-spot import and export.





## Updates on obstacles faced by foreign traders having representative in Vietnam regarding on-spot import and export



In relevant documents, the customs authority is following the provisions of Clause 1, Article 35, Decree No. 08/2015/ND-CP. Accordingly, on-spot exports and imports shall include:

- a) *Those produced in Vietnam under contract manufacturing arrangements and sold to Vietnamese organizations or individuals by overseas ones;*
- b) *Those traded under the sale and purchase contract between domestic enterprises and exporting and processing enterprises or enterprises located in free trade zones;*
- c) *Those traded under the sale or purchase contract between Vietnamese enterprises and **overseas organizations or individuals that have no representative in Vietnam**, and delivered or received under the designation arrangement between foreign merchants with other enterprises in Vietnam.*

Also, in Clause 5, Article 3 of Law on Foreign Trade Management: *“Foreign trader without presence in Vietnam” means a foreign trader who does not engage in investment and business activities in Vietnam according to the forms prescribed in law on investment, trade or enterprises and does not establish any representative office or branch in Vietnam in accordance with regulations of law on trade or enterprises.”*

Therefore, the general viewpoint of the instructional documents is that in cases of goods traded between Vietnamese enterprises and foreign traders already present in Vietnam, such situations do not fall under on-spot import and export according to Point c, Clause 1, Article 35 of Decree No. 08/2015/ND-CP.



## Updates on obstacles faced by foreign traders having representative in Vietnam regarding on-spot import and export

According to Official Letter No. 1123/GSQL-GQ2 dated July 20, 2023, issued by the General Department of Customs (GDC), GDC clarifies two cases as stipulated in points a) and c), Clause 1, Article 35 of Decree No. 08/2015/ND-CP. Specifically:

- ✓ In the case where the Company A purchases goods from the Company B and the Company B designates the Company C (the Company C is the commercial presence of Company B in Vietnam) to deliver processed products to the Company A: the Company A carries out on-spot import and export procedures in line with the regulations in point a, Clause 1, Article 35 of Decree No. 08/2015/ND-CP.
- ✓ In the case where the Company A sells goods to the Company B and is designated to deliver the goods to the Company C. The Company C receives the goods from the Company A for processing on behalf of the Company B (the Company C is the commercial presence of the Company B in Vietnam): Since the Company B already has a presence in Vietnam, the requirement of not having a presence in Vietnam to perform on-spot import and export procedures as stipulated in point c, Clause 1, Article 35 of Decree No. 08/2015/ND-CP is not met.





## Updates on obstacles faced by foreign traders having representative in Vietnam regarding on-spot import and export

- Official Letter No. 676/GSQL-GQ2 dated May 17, 2023, from the General Department of Customs responds to Official Letter No. 561/HQĐNg-GSQL dated April 7, 2023, of the Customs Department of Da Nang City regarding challenges in customs procedures faced by foreign traders without a presence in Vietnam. The Department of Customs Supervision and Management provides guidance as follows: *“In reference to the regulation in point c, Clause 1, Article 35 of Decree No. 08/2015/ND-CP dated January 21, 2015, by the Government, if it is determined that a foreign trader has a presence in Vietnam, such cases **will not be considered on-spot import and export.**”*
- Official Letter No. 305/HQNKC� dated June 23, 2023, from the Customs Department of Binh Duong Province provides guidance: *“If a company engages in trading activities with a partner falling under point c, Clause 1, Article 35 of Decree No. 08/2015/ND-CP dated January 20, 2015, by the Government, **the Company shall complete customs procedures through bonded warehouses or trade by using VAT invoices.**”*
- Additionally, Official Letter No. 2226/HQTPHCM-GSQL dated August 2, 2023, from the Customs Department of Ho Chi Minh City also cites similar regulations.

All of these guidelines stipulate that the absence of performing customs procedures for on-spot export when trading goods with foreign traders who have a presence in Vietnam is not align with the provisions in point c, Clause 1, Article 35 of Decree No. 08/2015/ND-CP. However, these documents have not yet clarified the specific customs processing procedures and documentation handling in such cases.



## Updates on obstacles faced by foreign traders having representative in Vietnam regarding on-spot import and export

According to Opinion Letter No. 4111/TCT-CS dated June 22, 2023, from the General Department of Taxation addressed to the General Department of Customs, the Tax Policy Department, and the Legal Affairs Department concerning the issue of VAT refund for on-spot import and export, details:

1. The General Department of Taxation requests specific opinions from the General Department of Customs regarding on-spot import and export. *In relation to Official Letter No. 2408/HQBD-GSQL dated October 24, 2022, seeking opinions on the practice of accepting on-spot import and export declarations for hundreds of enterprises, but these cases do not meet the conditions for on-spot import and export declarations as stipulated in point c, Clause 1, Article 35 of Decree No. 08/2015/ND-CP, as these traders already have a presence in Vietnam based on the explanation of terminology in Article 3, Clause 5 of the Law on Foreign Trade Management 2017.*
2. The viewpoint of the General Department of Taxation is that *if customs authorities determine that the submission of on-spot import and export declarations by companies does not adhere to the regulations outlined in point c, Clause 1, Article 35 of Decree No. 08/2015/ND-CP dated January 21, 2015, then the Tax Authority will not process VAT refunds due to the failure to meet the customs declaration requirements as prescribed.*

With the handling approach of the General Department of Taxation, the risks for the business activities of foreign traders will include (1) the risk of not meeting the conditions for applying the 0% VAT rate for on-spot export, and (2) the risk of retroactive collection or non-reimbursement of the corresponding VAT amount for on-spot export that does not meet the conditions.





## Regarding comments on draft amendments to Decree No. 08/2015/ND-CP on on-spot import and export

On May 29, 2023, the General Department of Customs sent Official Letter No. 2587/TCHQ-GSQL and No. 2588/TCHQ-GSQL to various State management agencies, reporting and providing suggestions for amending Article 35 of Decree No. 08/2015/ND-CP, proposing the removal of provisions related to on-spot import and export.

Accordingly, the proposed suggestions are as follows:

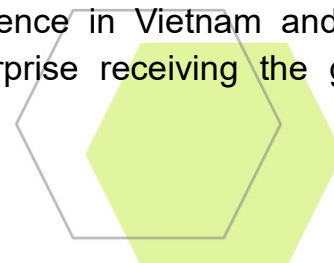
1. Abolish the provision regarding on-spot import and export stated in Article 35 of Decree No. 08/2015/ND-CP: Customs authorities will not conduct customs procedures for goods traded between two Vietnamese traders when a foreign trader designates the delivery and receipt of goods within the domestic territory.
2. Transfer the regulations specified in points a and b, Clause 1, Article 35 of Decree No. 08/2015 (**goods processed for foreign entities and then sold in Vietnam, and goods traded between domestic enterprises and non-duty-free zones**) into corresponding provisions as outlined in Circular No. 38/2015/TT-BTC (amended and supplemented by Circular No. 39/2018/TT-BTC) to align with the legal framework governing trade, foreign trade management, customs, export and import tariffs.
3. Recommend delegating the responsibility of management and taxation to domestic tax authorities to replace the customs procedures for on-spot imports and exports **because there is no physical movement of goods across borders or customs territories**, but are purely domestic transactions facilitated by foreign traders as intermediaries.



## Regarding comments on draft amendments to Decree No. 08/2015/ND-CP on on-spot import and export

The proposed policy to replace customs procedures for on-spot imports and exports is as follows:

- (1) In the case of goods processed for foreign traders (FTs) but then sold by FTs to organizations or individuals in Vietnam, where the recipient of processing or another Vietnamese trader purchases the processed goods from FTs and sells them to other traders in Vietnam, the transaction will be treated as a domestic trade between two enterprises. The processing enterprise must change the usage purpose of the processed goods, pay import taxes, and other taxes as for imported goods from foreign countries.
- (2) If goods produced from imported raw materials that have enjoyed import tax exemptions for production for export and generate transactions with foreign organizations or individuals but are designated for delivery in Vietnam, these transactions will be treated as domestic trade between two enterprises. The enterprise conducting production for export must change the usage purpose of the exempted imported raw materials, and pay the required taxes as regulated.
- In cases (1) and (2) above, to collect corporate income tax for transactions generating revenue in Vietnam, the FTs without a presence in Vietnam must sign contracts with agents in Vietnam to handle relevant tax matters.
- (3) In cases of pure trading: FTs without a presence in Vietnam can either sign contracts with agents or use VAT invoices. The VAT invoices should state the tax code/name of the foreign trader without a presence in Vietnam and the tax code/name of the designated Vietnamese enterprise receiving the goods in Vietnam.







## Regarding comments on draft amendments to Decree No. 08/2015/ND-CP on on-spot import and export

The implementation of adjustments aims to ensure proper management, ensuring that goods transactions are bought and sold within Vietnam, and to enforce import taxes for processed goods and goods produced for export when changing the usage purpose.

However, in making these adjustments, the General Department of Customs emphasizes the need to change the management methods of the Tax Authority and banking institutions in international payments. Enterprises involved in processing and production for export must pay taxes and make payments before delivering goods to other enterprises in Vietnam. The issue of tax refunds must also be addressed, particularly in cases where imported raw materials, supplies, or components are domestically bought and sold before being utilized in production and exported as finished products.

***From our perspectives, the proposed amendments and additions to the current on-spot import and export regulations still lack clarity in various legal, tax, and customs aspects, directly impacting business activities. Therefore, it is advisable to closely monitor these changes, stay updated on related policies, and assess the implications for business operations to formulate appropriate handling strategies.***



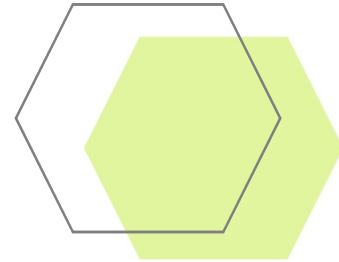
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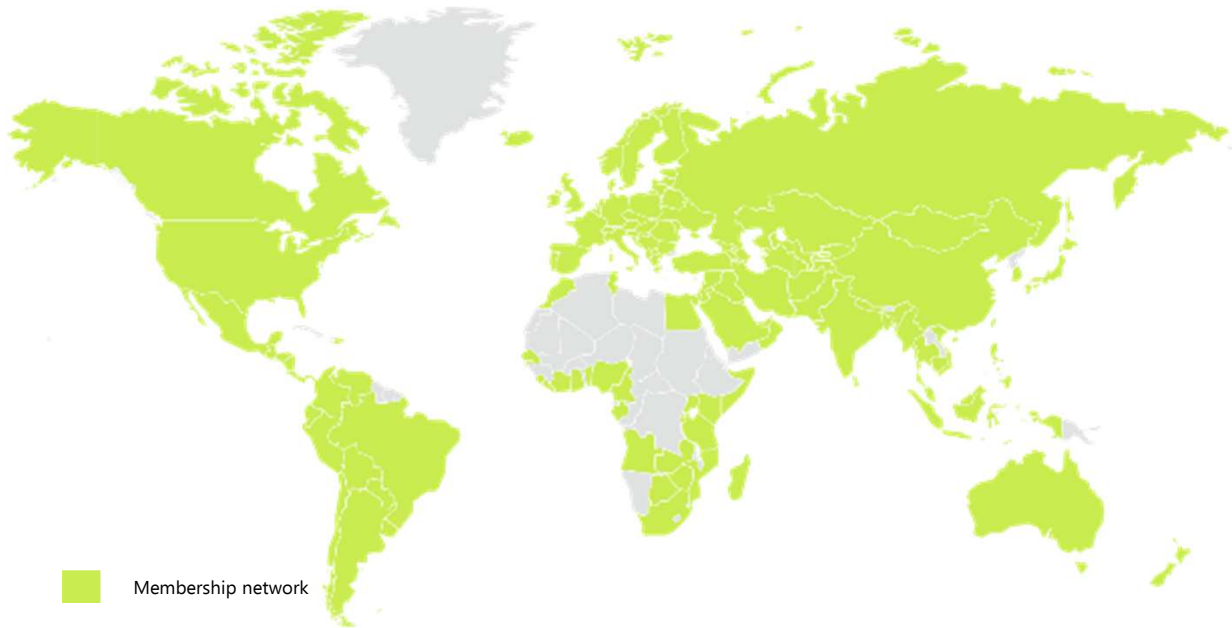
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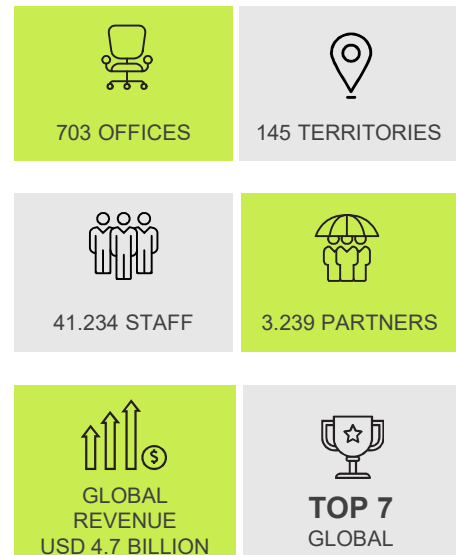


# INTRODUCTION TO BAKER TILLY A&C



**BAKER TILLY INTERNATIONAL**, a worldwide organization of professional accounting firms and business advisers, was established in 1987 and has headquartered at Global Office, Juxon House, 100 St Paul's Churchyard, London, EC4M 8BU, United Kingdom.

**Baker Tilly A&C is proud to be an independent member of the Baker Tilly network.** The international network gives us significant global reach in addition to our substantial national presence. We collaborate to leverage our skills, resources and local expertise with dedication to help our clients grow locally, nationally and globally.



# INTRODUCTION TO BAKER TILLY A&C



**Established in 1992**, formerly known as a State-owned enterprise directly under the Ministry of Finance.

**A&C specializes in auditing, accounting, consulting, valuation and training**, and has been constantly developing and diversifying services.

**During 30 years of operation**, A&C has successfully developed a branch network in major economic centers in the country.










**Baker Tilly A&C's team of more than 500 employees** undergoes ongoing training for improving professional expertise, skills and courage as well as updates knowledge on laws, economics, technology, marketing, etc. In addition to local training courses, our auditors and consultants have been seconded in training and practicing courses overseas, such as Malaysia, Singapore, the Philippines, Hong Kong, Great Britain, France, Belgium, Ireland, etc. organized by A&C or supporting programs of Ministry of Finance, Baker Tilly International and other international professional organizations.

**A&C has been providing services to more than 2,000 clients** working in various operating sectors in Vietnam, including:

- ☉ Vietnamese businesses and FDI ones of all economic sectors including manufacturing, finance, banking, oil and gas, etc.;
- ☉ International and domestic organizations, representative offices, and individuals who are in need of our services;
- ☉ Projects funded by the World Bank, the Asian Development Bank, the European Union, etc.

**Collective member** of Vietnam Association of Certified Public Accountants (VACPA); Member of Vietnam Business Club (VBC) and Collective member of Vietnam Tax Advisory Association (VTCA).

## Why is Baker Tilly A&C credible?

 <p><b>TOP 6</b> Vietnam</p>	 <p>Capable workforce and intensive experience</p>	 <p>Local understanding of the Vietnamese country, people and law</p>	 <p>Co-operation with competent authorities</p>	 <p>Worldwide membership network</p>	 <p>Nationwide network</p>	 <p>Dedication and profession</p>
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## INTRODUCTION TO CONSULTING SERVICES OF A&C

Baker Tilly A&C specializes in rendering auditing and consulting services in the fields of accounting - finance - tax - investment - legal - administration - construction

### Financial Statements

Financial statement is one of the pivotal activities of Baker Tilly A&C. Hence, we are proud to bring satisfaction to you with the best quality of service.

### Internal Audit

We are willing to provide a wide spectrum of advisory services which include the provision of internal audit teams, corporate governance, enterprise risk management, quality assurance reviews, legal compliance review and review of internal controls over financial statement preparation, etc.

### Finalized Accounts of Investment Project

Audited Reports will help you (Investor and related parties) complete the procedures and approval for the final settlement of the investment capital, the final settlement value of the construction investment before the facility is put into use. The above services will provide you with reliable information and documents on selecting your investment partner and for the purposes of mortgage, transfer, equitization, dissolution, bankruptcy law for firm.

### Consulting Service

We provide a range of consulting services including Tax Consultancy, Transfer Pricing, Business Consultancy, Due Diligence, Business Restructuring Consultancy, Legal and Investment Consultancy, Mergers and Acquisitions (M&A); Enterprise valuation consultancy, assessment and consultancy for setting up information management & digital transformation systems; Risk management consultancy.

### Training Service

Training topics on financial accounting, management accounting, auditing and internal audit, financial analysis, IFRSs, etc.

Organizing continuing professional development program and providing information on newly issued documents of the State

On-demand corporate training

### Accounting Service

With a team of professionals with knowledge of Vietnamese accounting, international accounting practices, many years of practical work experience in the business, accounting services provided by A&C always satisfy customers.