

# LEGAL UPDATES

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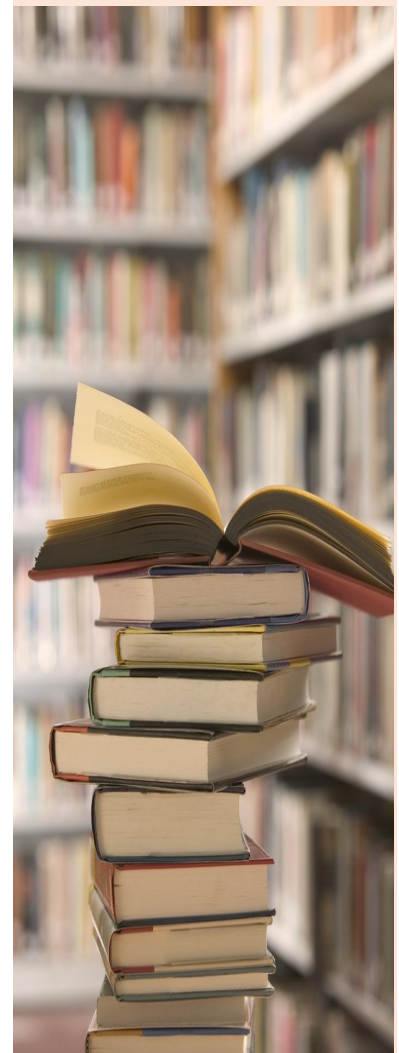
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## Whether branches are allowed to perform the right of import or not

Official letter No. 4337/BCT-KH dated June 18, 2019 of the Ministry of Industry and Trade refers to the issue that an export processing enterprise (EPE) performs the import right.

According to Clause 1, Article 45 of the Law on Enterprises No. 68/2014/QH13, the Ministry of Industry and Trade considers that the Branch is only allowed to perform the processing under authorization of its Parent Company whose activity of processing has been registered before.

Accordingly, in case the registered business activities of the Parent Company do not include the processing and there is no content of the Parent Company's authorization showing that the Branch can hire/order the processing, the Branch is not allowed to import goods to hire another Branch in the same Company to perform the processing.

In addition, according to Article 2 of Decree No. 09/2018/ND-CP, entities performing the right of import under the scope of adjustment of this Decree only are foreign investors,

economic organizations with foreign-invested capital, excluding branches.

Branches are only allowed to perform the import right according to the authorization of the Parent Company within the scope of right to import goods of the Parent Company in its capacity (as an economic organization with foreign-invested capital).



## Guidance on procedures and taxes for goods delivered in Vietnam under the designation of a foreign enterprise

Official letter No. 4594/TCHQ-TXNK dated July 16, 2019 of the General Department of Customs refers to the goods delivered in Vietnam under the designation of a foreign enterprise.

According to this Official letter, for hired/borrowed goods delivered in Vietnam under the designation of foreign enterprises, if such goods are hired/borrowed under agreements in processing contracts, the enterprise that is designated to receive the goods shall carry out procedures for temporary import and re-export in accordance with Clause 40, Article 1 of Circular No. 39/2015/TT-BTC.

In case of goods which are delivered and taken over under the hire/borrowing contracts with foreign enterprises, the enterprise that is designated to receive goods shall, based on the actual goods, carry out according to the regulations at Article 15 of Decree No. 69/2018/ND-CP; customs procedures shall be carried out

according to Clause 23, Article 1 of Decree No. 59/2018/ND-CP.

Regarding to tax policies, for the case that an EPE delivers goods sold to another EPE under the designation of a foreign enterprise, such goods is entitled to the exemption of import duties as prescribed at Point c, Clause 4, Article 2 of the Law on import and export duties No. 107/2016/QH13.



For the case that the enterprise that is designated to receive goods from an EPE is a domestic enterprise, if such domestic enterprise already signed a processing contract with the foreign enterprise, the goods is exempted from the import duties as prescribed at Clause 9, Article 16 of the Law on import and export duties. On the contrary, if the domestic enterprise that is designated to receive goods only signed a hire/borrowing contract (not processing contract), the goods then is not exempted from the import duties.

## Increasing region-based minimum wage levels 2020

A new Decree is drafted to replace Decree No. 157/2018/ND-CP stipulating the region-based minimum wage levels for employees working under labor contracts.

According to this Draft, the region-based minimum wage is going to increase in comparison with the year 2019 as follows (the increased amounts are put in the brackets):



- Region I: 4,180,000 dongs up to 4,420,000 dongs per month (240,000 dongs higher);
- Region II: 3,710,000 dongs up to 3,920,000 dongs per month (210,000 dongs higher);
- Region III: 3,250,000 dongs up to 3,430,000 dongs per month (180,000 dongs higher);
- Region IV: 2,920,000 dongs up to 3,070,000 dongs per month (150,000 dongs higher).

The region-based minimum wage levels mentioned above are applied for laborers who do simple works, for those with apprenticeship or vocational training, the region-based minimum wage levels must be added with at least 7%.

Areas of applying the region-based minimum wage levels in 2020 also have following changes: Dong Phu District of Binh Phuoc Province and Ben Tre City are added into Region II; Cam Khe District of Phu Tho Province, Cua Lo Town, Nghi Loc District, Hung Nguyen District of Nghe An Province, Dong Son Town, Quang Xuong Town of Thanh Hoa Province, Ba Tri District, Binh Dai, Mo Cay Nam of Ben Tre Province are added into Region III.

The Decree is expected to take effect from January 01, 2020 and replaces Decree No. 157/2018/ND-CP.

## Supplemental tax declaration is allowable for materials subsequently recognized as those unable produced inland

Official letter No. 4393/TCHQ-TXNK dated July 04, 2019 of the General Department of Customs refers to settlement of tax on imported goods that inland are unable to produce.

As prescribed at Point c, Clause 11, Article 16 of the Law on import and export duties No. 107/2016/QH13, the preferential investment projects are exempt from import duties for construction materials that are unable to be produced by inland.

According to this Official letter, for the case that even though enterprises already paid taxes upon importing materials used for preferential investment projects, if subsequently those materials are recognized as materials that have yet to be produced by inland, the enterprises are allowed to make further declaration

according to Article 20 of Circular No. 38/2015/TT-BTC (as amended by Clause 9, Article 1 of Circular No. 39/2018/TT-BTC).

The overpaid import tax amounts shall be settled according to the regulations provided at Clause 13, Article 1 of the Law on tax administration No. 21/2012/QH13 and Article 131 of Circular No. 38/2015/TT-BTC (as amended by Clause 64, Article 1 of Circular No. 39/2018/TT-BTC).





## Used machinery are not allowed to be imported for sale

Official letter No. 2115/BKHCH-DTG dated July 16, 2019 of the Ministry of Science and Technology replies to issues relating to implementation of Decision No. 18/2019/QĐ-TTg dated April 19, 2019.

As prescribed at Clause 3, Article 4 of Decision No. 18/2019/QĐ-TTg, in principle, the enterprises are allowed to import used machinery, equipment and technological lines only for the purpose of directly serving for manufacturing of enterprises, not for the purpose of resale business, even including sales to production establishments.

The Customs will base on the information stated in the Business registration certificate enclosed in the dossiers of importing machinery and equipment together with the information lookup on the national portal for enterprise registration to check the business activities and compare with the purposes of import which were already declared by the enterprises to make sure whether they are appropriate or not.

Criteria for used technological lines to be imported is that “they are being applied by at least 03 manufacturers of member countries of Organization for Economic Cooperation and Development (OECD)”, certified by “Inspection certificate”. According to Point dd, Clause 1, Article 10 of Decision No. 18, the “Inspection certificate” must include the assessment on the results of technological line inspection according to each criterion with names of country, manufacturer applying technologies, contact address, website (if any).

As prescribed at Point c, Clause 1, Article 8 of Decision No. 18/2019/QĐ-TTg, if the enterprises already have the written certification of the manufacturer regarding the manufacture year and standards of machinery, equipment, the “Inspection certificate” is not necessary for submission.

Currently, the Ministry of Science and Technology has yet to finish the procedures of appointing or recognizing organizations with the function of inspecting used machinery and equipment, therefore, the Ministry is not able to publish the list of these organizations.

Circular No. 23/2015/TT-BKHCH will expire from the date the Decision No. 18/2019/QĐ-TTg takes effect (June 15, 2019). Although Decision No. 18 provides no terms to repeal the Circular No. 23/2015/TT-BKHCH, Article 8 of Resolution No. 162/NQ-CP dated December 31, 2018 stated that “the prevailing regulations on import of used machinery and equipment are applicable until the date that the Prime Minister’s Decision on these contents takes effect”.

### **NOTICE:**

*“The purpose of this news is to provide the clients with further information. Although we have focused much on the ensure of accuracy, the information that is given on this news is not absolutely thorough and the clients would better consult professional opinions before application.”*