

## **Search Removing obstacles on tax policies in implementing Decree 59 and Circular 39**

**VCN- Facing the obstacles from municipal and provincial Customs Departments in implementing Decree 59/2018/ND-CP and Circular 39/2018/TT-BTC, the Import-Export Duty Department under the General Department of Vietnam Customs has specifically answered on the following contents: the time limit for tax payment, subjects of Tax inspection and guarantee, dossier on tax exemption for import goods, and on-spot import and export goods.**



### **Dossier on non tax tax collection**

Facing obstacles in classifying dossier on tax exemption for imported wood raw materials but have to re-exported to third countries, Gia Lai -Kontum said that Clause 3, Article 48 of Decree 08/2015/ND-CP stipulates that “In case customs declarants submit sufficient documents proving that their commodities are permitted to be exempted for tax payment when completing customs formalities required by customs procedures, customs authorities shall not be allowed to collect taxes on exported commodities which are returned or exported to the third country or exported to the free trade zone, and make their decision on customs clearance in accordance with legal regulations”. However, at present, there are no regulations on procedures for classification of dossier on Tax exemption for this item.

Dak Lak Customs Department also asked about what the regulations are that shall be applied for the dossier on tax exemption for these goods to ensure the process of non tax collection in accordance with provisions in Clause 4, Article 47, and Clause 3 Article 48 of the Government’s Decree 08/2015/ND-CP dated 20th January 2015. In case where applying the same as tax refund dossier as prescribed in Article 33, Article 34 of Decree 134/2016/ND-CP dated September 1, 2016, many unnecessary document will arise, it can not be implemented at the time of carrying out Customs procedures for re-export and re-import goods.

Specifically, the department asked that if the handling of dossier on non-tax collection is the same as the dossier on tax refund as prescribed in the revised Article 29 of Circular 38/2015/TT-BTC, whether the classification of dossier of non tax collection for these goods is implemented or not? If any, how is it implemented?

Answering the question from Gia Lai-Kontum, the GDVC said that the classification of dossier on non-export duty collection for the imported wood raw materials, for re-export to third countries, is stipulated in Article 27 on the Tax exemption, reduction, refund and non tax collection for import and export goods issued together with Decision No. 1919/ QD-TCHQ dated 28th June 2018 of the General Department of Customs.

For the obstacles of Dak Lak Customs Department, the General Department of Vietnam Customs said that the tax exemption for import goods is stipulated in Article 27, Article 28 on the Tax exemption, reduction, refund and non tax collection for import and export goods issued together with Decision No. 1919/ QD-TCHQ dated 28th June 2018 of the General Department of Customs.

## The time limit for tax payment

Regarding the time limit for tax payment, Thanh Hoa Customs Department asked about Article 42 of Circular 38/2015/TT-BTC that stipulates on the time limit for tax payment, and Article 2 of Circular 39/2018/TT-BTC amending, supplementing and abolishing Clauses 1,2,3,6,9 in Article 42. However, Clause 7 of Article 38/2015/TT-BTC still stipulates that “the time limit for tax payment shall comply with provisions of this Clause”, so how is it to be implemented?

Answering these obstacles, the General Department of Vietnam Customs has instructed that Clause 2 Article 156 of the Law on the Promulgation of Legal Documents stipulates that “If legal documents contain different provisions on the same issue, the higher legal document shall be applied”.

Article 9 of the Law on Import and Export (took effect on 1st September 2016) stipulates that import and export goods subject to taxable payment must be paid tax before Customs clearance or goods release (excluding guaranteed goods and the authorized economic operators). Thus, since 1st September 2016, the time limit for tax payment of import and export goods has complied with provisions in the Law on Import and Export Duty. Accordingly, provision in Clause 3 Article 42 of Circular 38/2015/TT-BTC is invalid.

Based on the above provisions, if the official price is not available, the taxpayers shall have to temporarily pay tax or guaranteed tax at the declared price before customs clearance or goods release, the tax payment time limit shall comply with Clause 1, Article 9 of the Law on Import and Export Duties. Where the temporarily paid tax amount or the guaranteed tax amount before customs clearance or release are less than the tax payable at the official price, taxpayers must pay the difference between the tax payable at the official price and the temporary price (if any) at the time of deciding an official price and shall not pay the late payment on the tax difference amount. The time of deciding the official price is implemented in accordance with the law

In case where the temporarily paid tax amount or the guaranteed tax amount before customs clearance or goods release are more than the tax payable at the official price, the overpaid tax amount shall be implemented in accordance with regulations.

Regarding the time limit for tax payment, Hai Phong Customs Department asked about Clause 27, Article 1 of Circular 39/2018/TT-BTC amending and supplementing Point c.2.2.2, Clause 6, Article 48 Circular 38/ 2015/TT-BTC that stipulates “In case where the using purpose of a part of total goods of the same category in many different Customs declarations is changed... the time limit for the imposed tax payment and late payment shall be in accordance with the time limit of tax payment of the final declaration”. So, “the final declaration” is understood as the final declaration of the entire imposed shipment or the final declaration of each separate item in case of more than one item being imposed, the Department said that this regulation needs to be clearly instructed by the General Department of Vietnam Customs.

Answering this question, the General Department instructed that Point a, Clause 27, Article 1 of Circular 39/2018/TT-BTC amending and supplementing Point c.2.2.2, Clause 6, Article 48 of Circular 38/2015/TT-BTC stipulates that “In case where changing the using purpose of a part of total goods of the same category in many different Customs declarations, and the tax amount was determined in the first export declarations or import declarations, the imposed tax amount shall be the average amount

that is determined as in the following formula:

The imposed tax amount is equal to the total tax amount of goods of the same category in Customs declarations divided by the total quantity of goods in Customs declarations multiplied by the quantity of goods changing the use purpose. The time limit for imposed tax payment and late payment shall be the time limit for tax payment of the final customs declaration”.

According to these provisions the final declaration is the final Customs declaration of each separate item subject to tax assessment.

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