

Customs procedures and tax policies for exported goods designated for delivery



VCN - In cases where export processing enterprises sell goods to a foreign company but deliver the goods to another export processing enterprise as designated by the foreign company, how to carry out customs procedures and tax policies? This question has been answered clearly by the General Department of Customs.

About customs procedures

The General Department of Customs said that Clause 1, Article 15 of Decree No. 69/2018 / ND-CP dated May 15, 2018 of the Government stipulates that except for goods prohibited from export or import; goods suspended from export or import, a trader may temporarily import goods to Vietnam under a contract concluded with a foreign party for the purposes of the warranty and maintenance, lease, borrowing, use or other purposes for a specified period and then re-export them out of Vietnam.

Article 41 of Decree No. 69/2018 / ND-CP specifies: The processor is entitled to lease or borrow machinery of the ordering party to perform the processing contract. The leasing, borrowing or giving of such machinery and equipment shall be agreed in the processing contract.

Besides, Article 50 of Decree No. 08/2015 / ND-CP dated January 21, 2015 (amended and supplemented in Clause 23, Article 1 of Decree No. 59/2018 / ND-CP dated April 20, 2018) stipulates Customs procedures for temporary import - re-export, temporary export - re-import of equipment, machinery, moulds or models for production, construction, project execution or experimentation and Clause 2 Article 61 Circular No. 38/2015 / TT-BTC dated March 25, 2015 (amended and supplemented in Clause 40 Article 1 of Circular 39/2015 / TT-BTC dated April 20, 2018) of the Ministry of Finance stipulate customs procedures for hired and borrowed machinery and equipment serving processing contracts.

According to the General Department of Customs, for hired or borrowed goods as agreed in the processing contract, the enterprise designated to receive goods shall carry out the procedures for temporary import and re-export prescribed in clause 2 of Article 61 of Circular 38/2015/TT-BTC (amended and supplemented at clause 40, Article 1 of Circular 39/2015/TT-BTC).

In the case of goods being a model of temporary import for re-export under a borrowing contract, the enterprise designated to receive goods shall base it on actual goods in accordance with the provisions of Article 15 of Decree No. 69/2018 / ND-CP, customs procedures according to Article 50 of Decree No. 08/2015 / ND-CP (amended and supplemented in Clause 23, Article 1 of Government's Decree No. 59/2018 / ND-CP).

About tax policy

Guiding tax policy in this case, the General Department of Customs analysed, according to Clause 1, Article 4 of the Law on Import and Export Duties No. 107/2016 / QH13, non-tariff area means an

economic zone located within Vietnam's territory, established in accordance with law, having a definite geographic boundary, and separated from the outer area by hard fences in order to facilitate customs inspection and customs control by the customs authority and relevant agencies with regard to exports and imports, inbound and outbound vehicles and passengers; the trading relationship between the non-tariff area and the outside area is considered exportation and importation.

Specifically, Point c, Clause 4, Article 2 of the Law on Import and Export Duties No. 107/2016 / QH13, clarifies that goods exported from a non-tariff area to abroad; goods imported from abroad to a non-tariff area and used within such non-tariff area and goods transported from one non-tariff area to another are not subject to import or export duty

While Clause 2, Article 2 of Decree No. 134/2016 / ND-CP regulates that goods exported from the domestic market into export processing enterprises, export processing zones, tax-suspension warehouses, bonded warehouses and other non-tariff areas defined in Clause 1 Article 4 of the Law on Import and Export duties; goods imported from export processing enterprises, export processing zones, tax-suspension warehouses, bonded warehouses and other non-tariff areas defined in Clause 1 Article 4 of the Law on Export and import duties to the domestic market, are subject to import and export duties.

Pursuant to Clause 9, Article 16 of the Law on Import and Export Duties No. 107/2016 / QH13, machinery and equipment, tools temporarily imported for re-export or temporarily exported for re-import to be used for a certain period of time or serve overseas processing, except for machinery, equipment, tools, vehicles permitted to be temporarily imported for re-export to serve **investment projects**, construction, installation, or manufacture, are subject to import and export tax exemption.

With the above regulations, the General Department of Customs said, in the case where an export processing enterprise sells goods to a foreign company but delivers those goods to another export processing enterprise as designated by the foreign company, if the enterprise designated to receive meets provisions of Clause 1, Article 4 of the Law Import and Export Duties No. 107/2016 / QH13, such goods will not be subject to import tax.

If the enterprise designated to receive goods is a domestic enterprise signing a processing contract with the foreign company and goods is a model temporarily imported for reported as agreed in the processing contract, such goods shall be exempt from import tax according to the provisions of Clause 9 Article 16 Law on Import and Export Duties No. 107/2016 / QH13.

If the enterprise designated to receive goods is a domestic enterprise but not signing a processing contract with the foreign company and goods is a model under the borrowing contract (without payment), such goods shall not be exempt from import tax according to the provisions of Clause. 9 Article 16 of Law on Import and Export Duties No. 107/2016 / QH13, the enterprise designated to receive goods must declare and pay import tax according to regulations and shall be refunded the paid import tax. The refund tax will be determinate on the basis of remaining use value of the goods upon reporting according to point đ, clause 1 of Article 19 of Law on Import and Export Duties No. 107/2016/QH13