



# 서우회계법인 베트남

SEOU VIETNAM ACCOUNTING COMPANY LIMITED

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### REGULATIONS UPDATE

#### Decree 44/2023/ND-CP dated 30/06/2023 on reducing VAT from 10% to 8%

On June 30, 2023, the Government issued Decree 44/2023/ND-CP (“Decree 44”) stipulating the VAT reduction policy in accordance with Resolution 101/2023/QH15 of the National Assembly. Decree 44 has the following main contents:

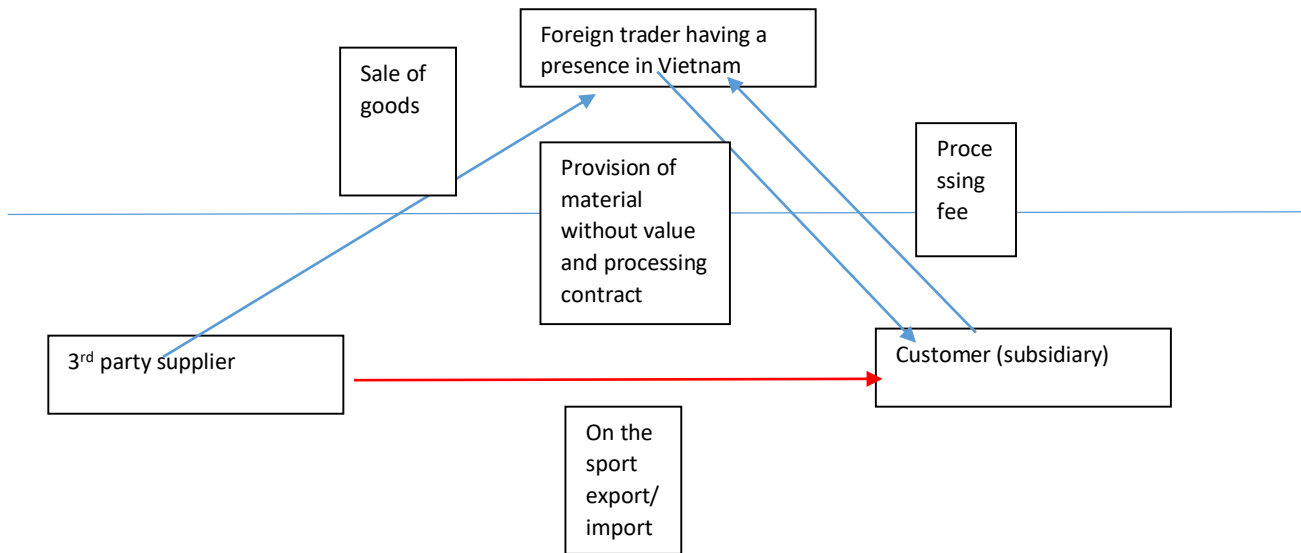
- VAT on goods and services currently subject to 10% VAT shall be reduced to 8%, except the following goods and services:
  - Telecommunication, financial activities, banking activities, securities, insurance, trading of real estate, metal and precast metal products, mining products (excluding coal mining), coke mining, refined oil, chemical products. Further details are provided in Appendix I enclosed with Decree 44.
  - Goods and services subject to special consumption tax. Further details are provided in Appendix II enclosed with Decree 44.
  - Information technology as prescribed in the Law on information technology. Further details are provided in Appendix III enclosed with Decree 44.

Reduction of VAT for each type of goods and services shall be applied consistently in all stages, including import, production, processing and trading.

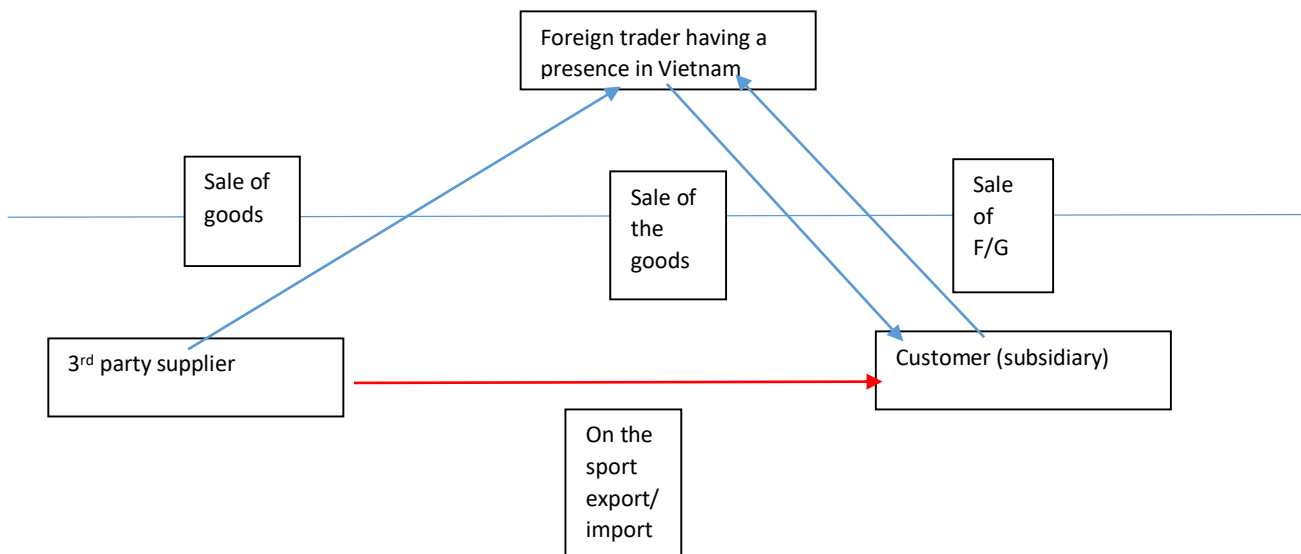
- When issuing a VAT invoice for the provision of goods and services subject to VAT reduction, the taxpayers write “8%” at the VAT rate line; VAT amount; total amount to be paid by the buyer. Where different tax rates apply when selling goods or providing services, the VAT invoices must clearly state the tax rates of each goods or service.
- In case a business establishment has issued an invoice and declared at the tax rate to calculate VAT that has not yet been reduced as prescribed in this Decree, the seller and the buyer shall handle the issued invoice in accordance with regulations on invoices and vouchers. Based on the invoice after handling, the seller declares the adjustment of the output tax, and the buyer declares the adjustment of input tax (if any).
- Taxpayers declare VAT-reduced goods and services according to Form No. 01 in Appendix IV issued with this Decree together with the VAT returns.
- This Decree takes effect from July 1, 2023 to the end of December 31, 2023.

## Inland export/import transaction

Current Processing contract between the investor and the sub.



Current sale contract of finished goods between the investor and the sub.



## 1. Relevant Official Letter

According to the Official Letter No. 4357/TCHQ-GSQL dated 17<sup>th</sup> of Oct., 2022:

- GDC opined: under the on-the spot import and export transactional official Letter No. 4357/TCHQ-GSQL, *On-the-spot exports and imports are allowed for those which have no investment or business activities in Vietnam, and no representative office or branch here, as set out in the respective laws on investment, trade, and enterprises.*
- Exporting/Importing Vietnamese companies carrying out on-the-spot import and export activities are responsible for checking that the relevant foreign traders do not have a presence in Vietnam.

Furthermore, recently the General Department of Customs issued Official Letter No. 676/GSQL-GQ2 dated 17/05/2023 responding to a question regarding the on-the-spot import and export activities of foreign traders which do not have a presence in Vietnam and which can perform inland export/import transactions, in which GDC opined:

- *“Clause 5, Article 3 of the Law on Foreign Trade Management stipulates: “Foreign trader without a presence in Vietnam is 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.”*
- *In Clause 2, Decree No. 90/2007/ND-CP dated May 31, 2007 of the Government stipulates: “Foreign business entity which does not have a presence in Vietnam means a foreign business entity which does not make a direct investment in Vietnam in the forms stipulated in the Law on Investment and the Commercial Law; and which does not have a representative office or a branch in Vietnam pursuant to the Commercial Law.”*
- Considering the provisions at Point c, Clause 1, Article 35 of Decree No. 08/2015/ND-CP dated January 21, 2015 of the Government as shown below, if a foreign trader already has a presence in Vietnam(including a subsidiary), it is not eligible for on-the-spot import and export activities.”

Article 35 Decree 08/2015 is as below:

“Article 35. Customs procedures that must be followed by on-the-spot exports and imports

*Clause 1* On-the-spot exports and imports shall include:

- a) Those produced in Vietnam under toll manufacturing arrangements with a foreign trader and sold to Vietnamese organizations or individuals;
- 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 presence in Vietnam, and delivered or received under the designation arrangement between foreign merchants with other enterprises in Vietnam.

## 2. Effect to the taxpayers in Vietnam

### 2.1. Effect to the local suppliers

It is understood that a foreign trader which has a Vietnamese subsidiary, would be deemed to have a presence in Vietnam, and thus may not enter into on-the-spot import and export transactions according to the above guidelines.

### 2.2. Effect to the customer (subsidiary of the investor) in Vietnam

The supplier of the goods shall be a local supplier rather than a foreign trader because the foreign trader cannot export and the customer (subsidiary of the investor) cannot declare importation anymore. The input VAT on the domestic purchase rather than “not subject to VAT” on “raw materials imported for export manufacturing or export processing under contracts with foreign partners” on the on-the-spot importation shall be applied. The input VAT on the domestic purchase shall be refunded or credited according to the export sale activity of the customer. However, the input VAT refund process shall cause more cost and time-consuming works.

Without further guidance, still FCT on the imported contracting value shall be applied.

## 3. Proposed amendments to on-the-spot import and export transactions

Besides, on 29 May 2023, the General Department of Customs (“GDC”) issued official letters no. 2587/TCHQ-GSQL and 2588/TCHQ-GSQL regarding draft amendments to Article 35 Decree 08/2015/ND-CP on on-the-spot import and export transactions. Pursuant to amendment of Article 35 Decree 08/2015, on-the-spot import and export transactions are defined to exclude the following:

- (a) Goods produced in Vietnam under toll manufacturing contracts with a foreign trader and sold to Vietnamese organizations or individuals;
- (c) Buy/sell transactions between Vietnamese enterprises and overseas organizations or individuals that have no presence in Vietnam, where goods are delivered or received under the arrangement between foreign traders with other enterprises in Vietnam....etc.

The GDC proposed to abolish the on-the-spot import and export transactions regulated in Article 35 above and proposed alternative procedures, whereby the on-the-spot import and export transactions should be treated as domestic transactions; and the involved foreign traders will have to appoint an agent in Vietnam to fulfill its tax obligations.

## 4. Estimated effect of taxes to the taxpayers

According to the report on assessment and summary of the implementation of customs procedures for on-the-spot exports and imports specified in Clause 1, Article 35 of Decree No. 08/2015/ND-CP and proposed amendments and supplements of the General Department of Customs as follows:

*“Assessment of the impact of tax policy when abolishing Article 35 of Decree No. 08:*

*+ Regarding import and export tax: When the provision of Point c, Clause 1, Article 35 of Decree No. 08 is abolished, the customs authority does not carry out customs procedures, the purchase and sale between two Vietnamese enterprises has elements, designated by Foreign traders, are domestic transactions, and do not arise import and export relations, are not subject to the law on import and export taxes.*

*+ Regarding VAT: Because it is a domestic trading activity, the VAT rate of 0% is not applied as prescribed in Article 9 of Circular No. 219/2013/TT-BTC. The purchase and sale of goods between two Vietnamese enterprises must declare and pay VAT like domestically traded goods.*

*+ Regarding CIT: According to the provisions of Circular 103/2014/TT-BTC, FCT is applicable to foreign individuals and organizations generating income from the provision of services or supply goods in Vietnam; the current FCT rate applicable to the supply of goods, raw materials, supplies, machinery and equipment; distribution and supply of goods, raw materials, supplies, machinery and equipment associated with services in Vietnam at 1%.*

*If the regulations on on-the spot import and export are removed at Point c, Clause 1, Article 35 of Decree No. 08, the regulations on collection of FCT in Circular No. 103/2014/TT-BTC will be removed.*

*However, it is unclear whether the CIT imposition on the foreign trader shall be applied because General department of taxation has not revised further guidance.*

*\* When the provisions of Article 35 of Decree No. 08 are abolished, the current import and export tax collection will change as follows:*

*+ In case goods purchased within Vietnam and sold within the domestic market: VAT shall be applied as for domestic transactions.*

*+ In case goods purchased is of the imported origin and sold under the inland export scheme, such as importing raw materials for the production of export goods, the importing enterprise must change the purpose of the use of imported raw materials & supplies that have been imported with the import duties exemption, must pay full payment of import duties, import VAT and other taxes (if any) as prescribed; and enterprises purchasing goods from Vietnamese suppliers under the on-the-spot import in Vietnam valid under the Decree 08 shall pay output VAT on the domestic purchase according to regulations.”*