

CIRCULAR No. 87/2004/TT-BTC OF AUGUST 31, 2004

GUIDING THE IMPLEMENTATION OF EXPORT TAX, IMPORT TAX .

Pursuant to the December 26, 1991 Law on Export, Import Tax and the July 5, 1993 as well as the May 20, 1998 Laws Amending and supplementing a Number of Articles of the Export Tax, Import Tax Law;

Pursuant to the Government's Decree No.54/CP of August 28, 1993, Decree No.94/1998/ND-CP of November 17er of A1993rn7993, Decree

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1.1.1 For export goods: They are the prices of goods sold to customs at export border-gates (FOB prices), exclusive of



Dan daily. In cases where it is not published (or where the exchange rates are not published in the Nhan Dan daily) or the information cannot reach the border gates in the day, the tax calculation exchange rate of that day shall be that of the preceding day.

For foreign currencies not transacted on the inter – bank foreign currency market, the exchange rates shall be determined on the principle of the average cross exchange rate between the US dollar (USD) and Vietnam dong on the inter – bank market and the exchange rate between the US dollar and other foreign currencies on the international market, which are publicized by the State Bank of Vietnam.

### 3 Tax payment currency

The export and import tax shall be paid in Vietnam dong. In cases where tax payers wish to pay tax in foreign currencies, the payment must be made in the freely convertible foreign currencies publicized by the State Bank of Vietnam.

## III. TAX RATES

### 1. Export tax rates

The export tax rates are specified for every goods item in the Export Tax Tariffs.

### 2. Import tax rates

The import tax rates shall include preferential tax rates, especially preferential tax rates and ordinary tax rates, concretely as follows:

2.1 Preferential tax rates are the tax rates applicable to import goods originated from countries of groups of countries which have reached agreements on most – favored – nation treatment in trade relations with Vietnam.

Preferential tax rates are specified for every goods item in the Preferential import Tariffs.

Conditions for application of preferential tax rates:

- Import goods must have certificates of origin (C/O) from countries which have reached agreements on most favored nation treatment in trade relations with Vietnam. Such countries or groups of countries or groups of countries which have reached agreements on most favored nation treatment in trade relations with Vietnam

- The certificates of origin (C/O) must be compliant with current law provisions

2.2 Specially preferential tax rates are the tax rates applicable to import goods originated from the countries or groups of countries which have reached agreement with Vietnam on especially preferential import tax rates under the institution of free trade areas tariff alliance, or aiming to facilitate border trade exchanges and other cases especially preferential treatment. Specially to every goods item according to the provisions of the agreements

Conditions for application of especially preferential tax rates

- Import goods must have certificates of origin (C/O) from the countries which have reached agreements with Vietnam on especially preferential import tax rates. The C/O must be compliant with current law provisions

- The import goods must be items specified in the lists of goods entitled to especially preferential tax rates for each country or group of countries publicized by the Government or the Government – authorized agencies

- Other conditions (if any) for application of specially preferential tax rates shall comply with the specific provisions in separate legal documents applicable to countries or groups of countries with which Vietnam has made commitment on specially preferential tax rates.

In cases where the C/O cannot be produced, as required when the customs procedures are carried out, the customs officials will calculate tax at the preferential tax rates or specially preferential tax rates according to the commitments and declarations by the tax payers. Within 60 days as from the date of registering the import goods declarations by the tax payers must produce the C/Os as prescribed to the customs offices. In case of failure to produce C/Os according to regulations, the customs officials will calculate tax and sanction the violations according to current regulations.

2.3 Ordinary tax rates are the tax rates applicable to import goods originated from countries with which Vietnam has not reached agreements on most favored nation treatment or on especially preferential import tax rates.

The ordinary tax rates is 50% (fifty percent) higher than the preferential tax rates of each goods item specified in the Preferential Import Tax and is calculated as follows.

The ordinary tax rate = the preferential tax rates + (the preferential tax rates x 50%)

2.4 Import goods in number of cases must be subject to additional tax (according to Article 1 of the May 20, 1998 Law amending and supplementing some articles of the Law on Import and Export Tax, 1997) and .0.8(In cas30(Organiza-.).1.15(nculate1(nvidu

shall be the date the customs offices supply automatic declaration numbers from the system (hereinafter called the date of registering export, import goods declaration for short).

The export tax, import tax shall be calculated according to the tax rates, tax calculation prices, tax calculation exchange rate of the date of registering the export, import goods declarations. If past 15 days as from the date of registering the export goods or import goods are not available, the already registered export, import goods declarations shall be invalid for carrying out the procedures for export, import goods. When the actual export, import goods are available, the tax payers must re-start procedures for declaration and registration of export, import goods declarations; the tax calculation time shall be the date of subsequent declaration registration.

Where tax payers make declaration before the date of registering the export, import goods declarations, the tax calculation exchange rate shall be the exchange rate on the date the tax payers made the declarations.

## 2. Tax notification time limit is specified as follows:

Within 8 working hours as from the time the tax payers register their export, import goods declarations, the customs offices notify them of the payable tax amounts.

For case where expertise of the technical standards, quality, volume, categories is required to ensure the accurate tax calculation (such as the identification of goods appellations, commodity codes under the tariffs, the quality, the quantity, technical standards, used of brand-new import goods...) the customs offices shall issue notices on payable tax amount according to tax payer's declarations within 8 working hours as from the time the tax payers register the export, import goods declarations, thus leading to changes in the payable tax payable amounts, the tax payers must pay tax according to the expertise results.

Upon the availability of the expertise results leading to the changes (if any) in the payable tax amounts, the customs offices shall issue notices readjusting the initial notices within 8 working hours as from the time of receiving the expertise results. The expertise costs shall be paid by the customs offices if they request the expertise or by tax payers if they request the expertise.

## III. Export tax, import tax payment time limits

1. For export goods, it is 15 days as from the date the tax payers receive the customs offices' tax notice on payable tax amounts.

2. For goods being supplies, raw materials imported for direct production of export goods, it is 9 months (rounded 275 days) as from the date the tax payers receive the customs offices tax notices on payable tax amounts.

2.1. Conditions for application of the 9-month tax payment time limit for supplies and raw materials imported for direct production of export goods must include:

- The written registration of supplies and/or raw materials imported for direct production of export goods;

- The tax payers do not owe overdue debts (at the time of importation) under the provisions of the Export Tax, Import Tax Law, except for the cases where the overdue debts of import goods are owed but the products have been actually exported and the tax payers have fully submitted the dossiers requesting tax reimbursement within the prescribed time limit (including cases where the customs offices have not yet carried out the settlement procedures).

Basing themselves on the prescribed dossiers, the customs offices which carry out the import procedures shall issue notices on 9-month tax payment time limit to the tax payers and at the same time monitor the debts owed by the payers in order to settle the tax debts upon the actual exportation of products.

For a number of special cases where enterprises' production, supplies and raw material-reserving cycles are longer than 9 months such as building ships, boats,



limits permitted by competent bodies for temporary export re-import or temporary import for re-export (applicable also to cases of extension) according to the Trade Ministry's regulations.

4. For consumer goods, tax must be completely paid before the reception of goods (the list of consumer goods shall comply with the Trade Ministry's regulations), except for the following cases:

4.1. Where the tax payers have their payable tax amount underwritten, the tax payment time limit shall be 30 days as from the date the payers receive the customs offices' notices on payable tax amounts, provided that:

- The underwriting subjects must be credit institutions or other organizations licensed to conduct a number of banking operations under the provisions of the Law on Credit Institutions and the Law amending and supplementing a number of articles of the Law on Credit Institutions.

- The underwriting contents must clearly state the names of the underwriting organizations, the names of the underwriting amounts, the underwriting duration and the underwriting subjects' commitments.

Basing themselves on the underwriting paper of the underwriting organizations, the customs offices where the import procedures are carried out shall issue notices on the tax

5. For non-commercial export, import goods ~~port~~, import goods of border residents, the tax payers must completely pay tax ~~before~~ exporting goods to foreign countries or importing goods into Vietnam.

6. For import goods not subject to tax payment under the provisions at Points 2, 3, 4 and 5 above the tax payment time limit shall ~~be~~ 30 days as from the date the tax payers receive the customs offices' ~~tax~~ notices on payable tax amounts.

7. For import goods with different tax payment time limits, separate import declarations must be made according ~~to~~ different tax payment time limits.

8. Where export, import goods are still ~~in~~ under the supervision by the customs offices, but temporarily seized by competent ~~State~~ agencies for investigation and handling, the tax payment time limit for each kind of goods shall comply with the provisions the Export Tax, Import Tax Law and be counted from ~~the~~ date the competent State agencies issue documents permitting the release of temporarily seized goods.

D. Tax exemption, consideration of tax exemption, tax reduction

I. Tax exemption

Organizations and individuals when e

4. Export, import goods within the tax-free luggage norms of passengers on exit or entry at Vietnamese border gates as provided in the Government's Decree No.66/2002/ND-CP of July 1, 2002 prescribing the luggage norms for people on exit, entry and import gifts, presents, which are exempt from tax.

5 For export, import goods of foreign organizations or individuals that enjoy privileges and immunities in Vietnam under Vietnamese laws in accordance with the international conventions which Vietnam has signed or acceded to, the Ordinance on privileges and immunities reserved for diplomatic missions, consulates and representative office of international organizations in Vietnam and the guidance in Joint Circular No. 04/TTLB of February 12, 1996 and No. 04/BS/TTLB of October 20, 1996 of the Ministry of Trade, the Ministry of Foreign Affairs, the Ministry of Finance and the General Department of Customs shall apply.

6. For goods exported or imported in service of export processing for foreign parties under signed processing contracts made in strict accordance with the provisions of the Government's Decree No. 57/1998/ND-CP of July 1, 1998 detailing the implementation of the Commercial Law regarding activities of goods export, import, processing, trading agency with foreign countries), tax exemptions shall apply to the following cases:

- Raw materials imported for processing;
- Supplies used in the production, processing process (papers, chalk, painting brushes, makers, cloth pins, printing ink, glue brushes, screen-printing frames, erasing crepe, varnish...), if enterprises can set their consumption norms;
- Goods used as models for processing;
- Machinery, equipment imported in direct view of processing as agreed in the processing contracts. Upon the expiry of the processing contracts they must be re-exported; if not, they must be declared for tax payment;
- Processed products exported for return to foreign parties (with export tax);
- Discarded materials, faulty products destroyed under the customs officers' supervision;
- Finished products supplied by the processed for affixed to processed products or packing together with processed products in complete goods to be exported to foreign countries shall be exempt from tax, like raw materials or supplies imported for processing, if they satisfy the following conditions: (i) They are expressed in the processing contracts or the annexes thereof; (ii) the total of norms of import raw materials, supplies used for the processing purpose must include the norms of finished products; (iii) they are managed like raw materials or supplies imported for processing.

Director of processing enterprises shall have responsibility for the use on imported raw materials and/or supplies for the processing purpose; the norms of actual consumption of raw materials, supplies imported for processing. In case of committing violations, they shall be handled according to law provisions.

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Machinery, equipment, raw materials, supplies, processed products paid by foreign parties as processing charges, when imported, shall be subject to import tax according to regulations.

The tax management and liquidation procedures applicable to import raw materials, supplies and export processed products shall comply with Finance Ministry's separate documents

- The contracts on import or entrusted import (if goods are imported under entrustment) or bid-winning notifications enclosed with the contracts on goods supply (if goods are imported in form of bidding, the payment prices are exclusive of import tax).

1.2. Import goods used exclusively in direct service of scientific research:

- The written tax exemption consideration requests of the units conducting the scientific research;

- The scientific research subject dossiers shall include:

+ Decisions approving the research subjects, issued by competent State bodies;

+ Lists of goods to be necessarily imported for materialization of the research subjects, approved by the authorities that have approved the subjects.

- The declarations of import goods already cleared from the customs procedures;

- The tax notices of the customs offices;

- The contracts on import or entrusted import (if goods are imported under entrustment) or bid-winning notifications enclosed with the contracts on goods supply (if goods are imported in form of bidding, the payment prices are exclusive of import tax).

1.3. Import goods used exclusively in service of education and training:

- The tax exemption consideration requests of the units performing the work of education and training;

- Decisions approving the projects on investment of equipment and facilities under the projects, approved by authorities that have approved the projects;

- The declarations of import goods already cleared from customs procedures;

- The tax notices of the customs offices;

- The contracts on import or entrusted import (if goods are imported under entrustment) or bid-winning notifications enclosed with the contracts on goods supply (if goods are imported in form of bidding, the payment prices are exclusive of import tax).

On the basis of the prescribed dossiers, the General Department of Customs shall consider and issue decisions on tax exemption in the cases prescribed at Point 1.1.; the local Customs Departments shall consider and issue decisions on tax exemption for the cases prescribed at Points 1.2, 1.3. The customs offices which carry out the import procedures shall base themselves on the tax exemption decisions of the General Department of Customs or local Customs Departments to inspect and compare them with the original dossiers of the import goods lots for effecting the liquidation of the exempted import tax amounts and clearly inscribe on the import goods declarations "Goods exempt from tax under Decision No... day... month... year... of..."

2. Import goods of foreign-invested enterprises or business cooperation parties under the Law on Foreign Investment in Vietnam shall comply with the Government's Decree No. 24/2000/ND-CP of July 31, 2000 detailing the implementation of the Law on Foreign Investment in Vietnam and Decree No. 24/2000/ND-CP of July 31, 2000 and documents guiding the implementation thereof.

Where enterprises enjoy the import tax exemption preference but do not import goods from foreign countries and, instead re-purchase duty-free import goods of foreign-invested enterprise or business cooperation parties which are allowed to sell them in Vietnam, the enterprises shall be allowed to receive such goods for creation of their fixed assets eligible for import tax exemption under the Law on Foreign Investment in Vietnam and the current guiding documents, and at the same time import shall not be retrospectively collected from the enterprises allowed to sell goods. These goods must be deducted (in terms of their volume, value) from the duty-free goods list approved for the enterprises by competent State bodies.

3. Import goods of domestic investors under the Domestic Investment Promotion Law (amended) shall comply with the provisions of the Government's Decree No. 51/1999/ND-CP of March 29, 2002 amending and supplementing its A, B and C issued in Appendices to Decree No. 51/1999/ND-CP of July 8, 1999 and the current guiding documents.

Where the enterprises are entitled to import exemption preference but do not import goods from foreign countries and instead purchase goods already exempt from import tax of domestic enterprises which are allowed to sell them in Vietnam, the enterprises shall be allowed to receive such goods for creation of their fixed assets eligible for import tax exemption under the Domestic Investment Promotion Law (amended) and the current guiding documents and at the same time the import tax shall not be retrospectively collected from the enterprises which are allowed to sell the goods. These goods must be deducted (in terms of their volume, value) from the duty-free goods list approved for the enterprises by competent State bodies.

#### 4. For goods being gifts, presents

Goods being gifts, presents which are entitled to export, import tax exemption consideration are goods permitted to be exported or imported, including the following specific tax exemption consideration cases and norms:

##### 4.1. For export goods:

- Organizations' or individuals' goods permitted to be exported from Vietnam for use as gifts and presents to organizations or individuals in foreign countries.

- Goods of foreign organizations and/or individuals, which are donated as gifts or presents by Vietnamese organizations and/or individuals when they enter Vietnam for working, tourism, visit to relatives, shall be allowed to be exported to foreign countries.

- Goods of Vietnamese organizations permitted to be exported for display at fairs or exhibitions or for advertisement; then donated as gifts or presents to organizations, individuals in foreign countries.

- For organizations and/or individuals sent abroad by the State for working trips, study or Vietnamese going abroad as tourists, apart from personal exit luggage norms, if bringing along goods to be given as gifts/presents to foreign organizations or individuals, they shall also be entitled to enjoy the export tax exemption consideration norms for such gifts and presents.

The norms for goods being gifts and presents entitled to export tax exemption consideration: The goods value does not exceed VND 30 million for an organization or VND one billion for an individual.

#### 4.2. For import goods:

4.2.1. Goods being gifts, presents of organizations and/or individuals overseas donated to Vietnamese organizations with a value not exceeding VND 30 million shall





- The declaration of exports goods, import goods which have gone through the customs procedures;
- The tax notice of the customs offices;
- The local administrations' written certifications (for cases specified in 4.3.3 above).

Where goods are gifts, presents or sample goods, which are carried by forwarding enterprises which also carry out the customs procedures therefore, apart from procedural dossiers listed above, there must also be gifts/presents or sample goods-receiving or individuals letters of authorization of the forwarding enterprises to carry and fill in the customs procedures for, such goods.

Where goods are entitled to temporary tax exemption, are not re-exported but permitted by competent State bodies for as gifts of presents to Vietnamese organization and/or individuals, the tax exemption consideration procedural dossier shall include: (i) The written request for tax exemption consideration; (ii) The invoice or ex-warehouse bill on the goods lot of gifts, presents; (iii) The gift, present delivery and reception record between the donor and the donee.

Basing themselves on the above dossiers, provision the local customs departments shall consider and issue decisions on tax exemption for goods lots of gifts, presents of foreign organizations, individuals to Vietnamese individuals and vice versa. Particularly for cases mentioned in 4.3.1 and 4.3.2 above, the General Department of Customs shall consider and handle them specifically.

On the basis of tax exemption decisions, the customs offices which have carried out the goods import procedures must liquidate the export tax amounts and clearly inscribe on the export, import goods declarations: "good exempt from tax under Decision No....day...month...year...of...".

5. For goods imported for sale at duty-free shops: The customs officers shall manage them according to the regulations on the management and supervision of goods imported for duty-free sale in the regulation on Duty-free Shops issued together with the Prime Minister's Decision No. 205/1998/QĐ-TTg of October 19, 1998 and Decision No. 206/2003/QĐ-TTg of October 7, 2003.

Where sale promotion goods, experimental goods supplied free of charge by foreign parties to duty-free shops for sale together with goods sold at duty-free shops, the above mentioned sale promotion goods, experimental goods are all subject to supervision and management by the customs offices like goods imported for sale at duty-free shops.

The local customs departments shall organize tax exemption and manage the goods on duty-free according to the provisions of this point

### III TAX REDUCTION CONSIDERATION

For export goods, import goods which are damaged or lost for plausible reasons during the course of transportation or loading as well as unloading (goods still being under the customs offices' supervision and management according to the current provisions of the Customs Law and the documents guiding the implementation thereof), the local Customs

Department shall consider and ~~take~~ decisions on tax reduction, based on the expertised loss or damage extents ~~and~~ relevant dossiers.

## E. TAX REIMBURSEMENT RETROS PECTIVE COLLECTION OF TAX

### I. TAX REIMBURSEMENT

#### 1. Cases entitled to tax ~~re~~imbursement consideration

For cases where tax has been paid, to be entitled to tax reimbursement consideration under Article 16 of the Government's ~~Deer~~ No. 54/CP of August 28, 1993, organizations and/ or individuals must fully possess the following papers:

1.1 For import goods with tax ~~ready~~ paid, which are ~~st~~kept in warehouse, storing yards under the customs offices' supervision and are allowed for re-export, there must be:

- The written request for reimbursement of paid import tax;
- The import tax declaration with ~~tax~~ calculation by the customs office;
- The export goods declaration already cleared ~~the~~ the customs procedures, with the customs office's certification ~~th~~ the goods stated in the ~~port~~ import goods declaration are still kept in warehouses or storing yards at ~~the~~ border gates or the goods still being under the customs office's supervision are actually exported;
- The tax notice; tax payment vouchers.

1.2 For export goods with the export tax ~~ready~~ paid, which are not exported, there must be:

- The written request for reimbursement of paid export tax;
- The export goods declaration w

goods in cases of changes in tax rates, tax calculation prices. If enterprises have paid the import tax in excess of the import tax amounts recalculated according to the actually imported goods, they shall be reimbursed the overpaid tax amounts.

The dossiers of request for reimbursement include:

- The written request for reimbursement of the overpaid import tax amount;
- The result of a competent State body's expertise of import goods;
- The foreign goods owner's certification of consignment of goods at variance with the contract;
- The import goods declaration clearly inserted with the goods inspection result and dossiers related to the transportation of the goods lots;
- The tax notice, tax payment vouchers;
- Vouchers of via – bank payment for the import goods lots.

1.5 For mistakes made in tax calculation (by tax payers or customs offices), the overpaid tax amount shall be returned, within one year dated back (from the date of registering the export/import goods declaration to the date

- The enterprise's written request for reimbursement of import tax on raw materials and/or supplies imported for production of export goods, clearly stating the volume and value of raw materials and/or supplies imported and already used for production of export goods; the paid import tax amount; the volume of export goods, the import tax amount requested for reimbursement;

- The list of actual consumption levels of imported raw materials and/or supplies of a product unit.

- The goods declaration of imported raw materials, supplies already gone through customs procedures; the import contract;

- The tax notice, tax payment vouchers

- The declaration of export goods already gone through customs procedures; the export contract;

- the contract on entrusted export or import, if it is the form of entrusted export or import;

- the via-bank payment vouchers for export goods lots;

- the contract on joint production of export goods, if it is the case of joint production of export goods.

Where enterprises deliver raw materials, supplies to export-processing enterprises or foreign parties for processing then receive products for production and/or export, apart from the above-mentioned papers, the following papers must be added:

- the goods declaration of export raw materials, supplies for processing; the goods declaration of import products from export-processing enterprises or foreign parties.

- Tax payment vouchers ( for import processed products).

- The processing contract signed with the export-processing enterprise or foreign party.

1.6.2.2 For enterprises importing raw materials, supplies for production of domestically consumed goods and later finding export outlets the permitted maximum duration is 2 years

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imported raw materials, supplies, the paid imported tax amount

(i) Products turned out from exported raw materials, supplies by the enterprise constitute one of the details, components of export component sets;

(ii) The enterprise purchase products combination with the details, components produced by the enterprises themselves do not constitute the export component sets.

A dossier of requesting import tax reimbursement shall consist of:

- The written request for import tax reimbursement, clearly explaining the volume, value of the import raw materials, supplies for use in the production of goods sold to export goods-mant goods-

already sold to the exporting enterprise ; the volume of the products already exported ; the import tax amount requested for reimbursement;

- The list of actual consumption levels of imported raw materials, supplies for the production of a unit of product sold other enterprise for export;
- The import goods declaration of raw materials; supplies already gone through the customs procedures; the import contract;
- The tax notice; tax payment vouchers;
- The purchase and sale contracts/invoices of the enterprise selling products to product – exporting enterprise; the list of vouchers on goods sale payment;
- The declaration of export goods already gone through the customs procedures (the photocopy certified as true copy by the exporting enterprise);
- The goods export contract signed with foreign customers (certified as true copy by the product-exporting enterprise);
- The via-bank payment vouchers for export goods lots;
- The entrust export contract, the entrusted import contract (if is the entrusted export or import).

The tax reimbursement cases specified at Points 1.6.2.5 and 1.6.2.6 above shall be considered for reimbursement of import tax on raw materials, supplies import for the production of export goods if the following conditions are fully met:

- the goods-selling enterprise, the goods - passing enterprise has paid value added tax by deduction method (the enterprises provide the photocopy certified as true copy by the enterprises); enterprises which have been registered and granted tax identification numbers must have invoices on goods sold between the two units.
- Via-bank payment for export goods in foreign currencies under Vietnam State Bank's regulations.
- Within 1 year at most (rounded to 365 days) from the time of importing raw materials, supplies (counting from the date of registration of the import goods declarations with customs offices) to the time of actually exporting the products.

1.6.2.7. Case where enterprises import raw materials, supplies for production of goods sold to foreign traders but deliver goods to other enterprise in Vietnam under designation by the foreign traders for use as raw materials for continued production or processing of export goods shall comply with the guidance Circular No.90/2002/TT-BTC of October 10, 2002 of the Finance Ministry.

1.6.3. Where raw materials and/or supplies imported for production of export goods, if the products are actually exported within the tax payment duration as provided for Section III, Part C of this Circular, the import tax on raw materials, supplies shall not have to be paid, corresponding to the actually exported goods value. The dossiers for consideration of non-

collection of tax shall be the same as those prescribed for tax reimbursement, except for the tax payment voucher to be replaced by tax notice of the customs office.

1.6.4. Imported raw materials and supplies consumption norms for considering the tax reimbursement:

1.6.4.1. Enterprises must themselves set, declare and register the consumption norms of imported raw materials and supplies for production of export goods with the customs offices where the raw materials and supplies are imported before exporting the products. In cases where the change of models, patterns, and categories of export goods in the course of production gives rise to new kinds of imported raw materials and/ or supplies for production of export products at variance with the norms already declared and registered with the customs offices, within 15 days after obtaining the reasons for above- mentioned change, the enterprises must themselves re- declare and register the consumption norms of imported raw materials and/ or supplies for production of export goods with the customs offices before carrying out procedures for product export.

The raw material and/ or supplies consumption levels cover the raw material and/ or supplies waste (if any) in the production course. The actual raw material and/ or supplies waste level for import tax reimbursement consideration shall not exceed 3% of the value (or volume) of the corresponding raw materials and/ or supplies already used for production of export products. For a number of products for which competent State bodies prescribe the raw materials and /or supplies waste levels higher than 3% such waste levels shall apply and those competent State bodies shall bear responsibility before law for these waste levels.

Particularly the consumption norms and waste levels of raw materials and/ or supplies for goods processed for foreign traders shall be agreed upon in the contracts by the parties. The directors of the processing enterprises shall be responsible for the use of imported raw materials and/ or supplies for the processing purposes.

In case of doubts about the raw material or supplies consumption norms for production of export products, the tax reimbursement – considering agencies may call for expertise by specialized branch agencies regarding that goods items or coordinate with the local tax offices



import tax	value		tax
amount	_____	x	on the
(corresponding			imported
to actually	The total		raw
exported	value of		materials,
products)	obtained		supplies
	products		

- The export product value shall be determined to be the volume of actually exported products multiplied by (x) the export unit price (FOB)

- The total value of obtained products shall be determined to be the total value of export products and the sale turnover of products (including also standard materials, recoverable faulty products and exclusive of value added tax on the sale turnover) for domestic consumption.

1.7. For goods temporarily imported for re-export or temporarily exported for re-import, they shall be considered for reimbursement of import tax or export tax, and import tax must not be paid upon the re-import and the export tax must not be paid upon the re-export in the following cases:

1.7.1. Goods temporarily imported for re-export or temporarily exported for re-import by mode of trading in goods temporarily imported for re-export; temporarily exported for re-import and goods imported under entrustment for the foreign parties then exported. A tax reimbursement consideration dossier shall consist of:

- The written request for export tax, import tax reimbursement;
- The import and export goods declaration duly gone through the customs procedures;
- The goods trading contract signed with the seller and the purchaser or the entrusted import contract signed with the foreign party;
- The tax invoice; tax payment vouchers;
- The export, import entrustment contract (if it is goods exported, imported under entrustment);
- Via-bank payment vouchers for export goods lots.

1.7.2. For import goods of Vietnamese enterprise which are permitted to be imported for agents delivering or selling goods to foreign countries; goods imported for sale to foreign firms' means on international routes running through Vietnamese ports and Vietnamese means on international routes according to the Government's regulations, there must be:

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- The written request for import tax reimbursement;
- The Trade Ministry's official dispatch permitting the import (for goods subject to the application for import permits of the Trade Ministry);
- The import goods declaration;
- The tax notice, tax payment vouchers;
- The sale invoice;
- The export goods declaration already gone through the customs procedures;
- The contract on goods forwarding agency and the contractor agreement on goods supply;
- The via-bank payment vouchers for export goods lots.

1.7.3. For import goods being drinks in service on international flights, a dossier shall consist of:

- The written request for import tax reimbursement;
- The Trade Ministry's official dispatch permitting the import (of goods items subject to the application for import permits of the Trade Ministry);
- The import goods declaration;
- The tax notice; tax payment vouchers;
- The bill on delivery and reception of drinks



shall not be paid for the actually re-imported goods volume. The dossiers for consideration of non-collection of export tax, import tax shall be the same as those prescribed for tax reimbursement consideration (particularly the payment vouchers shall be replaced by the tax notices of the customs offices).

1.8.4. Where the export goods are Vietnamese enterprises goods processed for foreign parties, that have been exempt from import tax on raw materials and/or supplies, must be re-imported into Viet Nam for repair, re-processing before they are re-exported to the foreign parties, the customs offices which manage settle the initial processing contracts must continue the monitoring and management until the processed goods are fully exported and the re-processed goods imported declarations are liquidated. If the re-processed goods are not exported, they shall be handled as follows:

- If they are domestically consumed, the tax payment declaration must be made like the processed goods exported or imported on spot;

- If they are allowed for destruction in Viet Nam and the destruction has already been carried out under the supervision by the customs office, they shall be exempt from tax like the processing declared materials, derivative products which are destroyed.

1.8.5. Where the export goods are those made imported raw materials and/or supplies; good temporarily imported for re-export (which are entitled to tax reimbursement before the export), which must be re-imported into Viet Nam, the enterprises must retrospectively collect the first import tax amount which were already reimbursed or shall not be considered for reimbursement of tax (if not yet reimbursed) corresponding to the volume of goods to be re-imported into Viet Nam and actually exported; the enterprises must declare and pay export tax (if being subject to export tax payment) and shall be considered for import tax reimbursement under the provisions of Article 1.6 and 1.7, Section I, Part E of this Circular.

1.9. Imported goods which, for some reasons, shall be re-exported to foreign owners or re-exported to the third countries as designated by the foreign owners shall be considered for reimbursement of the paid import tax corresponding to the re-exported goods volume and for non-payment of export tax:

1.9.1. Conditions for being considered for reimbursement of the paid import tax and non-payment of export tax:

- Goods are re-exported to foreign countries within one year (rounded to 365 days) after the goods were actually imported;

- Goods have not yet gone through the production, processing, repair or use in Viet Nam;

- Goods re-exported to foreign countries must go through the customs procedures carried out at places where the import procedures were carried out for such goods.

1.9.2. The dossiers for consideration of paid import tax reimbursement and non-payment of export tax shall each consist of:

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- The written request for consideration of import tax reimbursement and non-payment of export tax, clearly stating the reasons for re-export of goods to foreign owners (clearly identifying the volume, category, ~~type~~... of the re-exported goods);

- The declaration of import goods already insp

installation, in service of production and other purposes, when they are imported, such organizations and individuals must declare and pay import tax according to regulations and when they are re-exported out of Vietnam, such organizations and individuals shall be refunded the import tax. The to be – refunded import tax amounts shall be determined on the basis of the remaining use value of the imported machinery, equipment, instruments, transport means, calculated according to the ratio they are used and kept in Vietnam, if their use value is actually reduced to non, tax shall be refunded. Concretely as follows:

1.11.1. In cases where imported goods are brand-new ones

Duration of being used and kept in Vietnam	To be – reimbursed import tax amount
For 6 months or less	90% of the paid import tax amount
Between over 6 months and 1 year	80% of the paid import tax amount
Between over 1 year and 2 years	70% of the paid import tax amount
Between over 2 years and 3 years	60% of the paid import tax amount
Between over 3 years and 5 years	50% of the paid import tax amount
Between over 5 years and 7 years	40% of the paid import tax amount
Over 7 years	Non-reimbursement of the paid import tax

1.11.2. In cases where the import goods are used goods:

Duration of being used and kept in Vietnam	To be – reimbursed import tax amount
For 6 months or less	60% of the paid import tax amount
Between over 6 months and 1 year	50% of the paid import tax amount
Between over 1 year and 2 years	40% of the paid import tax amount
Between over 2 years and 3 years	35% of the paid import tax amount
Over 5 years	Non-reimbursement of the paid import tax amount

1.11.3. Dossiers for import tax reimbursement consideration shall each consist of:

- The written request for import tax reimbursement consideration;
- The contract (or written agreement) on import, borrowing of machinery, equipment, instruments, transport means;
- The export, import goods declaration with liquidation and certification by the customs office of the volume, category of the actually imported or actually exported goods and the enclosed voucher sets of the export, import goods lot;
- The tax payment voucher, tax notice;

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- The contract on entrusted export or import (for mode of entrusted export, entrusted import).

Where organizations and/or individuals ~~port~~ <sup>import</sup> machinery, equipment, instruments, transport means beyond the temporary import time limit, have to re-export them, but have not yet re-exported them and are permitted by the Trade Ministry (or competent State agencies)

- The written request for reimbursement paid export tax, import tax, other tax;
- The export or import goods declaration liquidated by the customs offices;
- Vouchers of payment of export tax, import tax and other taxes (if any);
- Invoices under the goods trading contract;
- Violation – handling records;
- The competent State body's decision on confiscation of violation goods.

1.14. If export or import goods, which are under the customs offices' supervision, and for which the declarations have been opened and tax notices have been issued but when conducting inspections for customs clearance, the customs offices detect violations, which must be destroyed and have already been destroyed, the decisions on non-collection of export tax, import tax (if any) shall be issued. The handling of violations regarding acts of exporting or importing goods in contravention of regulations, the forced destruction shall comply with current law provisions. The customs offices where import, export goods declarations are opened must archive dossiers on the destroyed goods; coordinate with relevant functional agencies in supervising the destruction of goods according to current law provisions.

1.15. the via-bank payment vouchers in the tax reimbursement (or non-collection) consideration dossiers shall comply with the guidance in the Finance Ministry's Circular No.120/2003/TT-BTC of December 12, 2003 as well as amending and/or supplementing documenting documents (if any). Particularly for re-exported petroleum, the payment currency must be the US dollar (USD).

2. The order for tax reimbursement settlement is as follows:

- For cases 1.1; 1.2; 1.3; 1.4; 1.5 and 1.13; Pursuant to Section I, Part E of this Circular, the export/import goods inspection sections shall issue certification and the tax calculation sections of the customs offices shall remain and carry out procedures for tax reimbursement. The local Customs Departments shall consider and issue decisions on tax reimbursement. The to be – reimbursed import tax amount shall be subtracted from the reimbursement-eligible subject's payable tax amounts of subsequent period. Where the tax amounts do not arise and they request direct reimbursement, the local Customs Department shall propose the Finance Ministry, the State Budget Department to directly reimburse the tax amounts to the eligible subject under the local Customs Departments' tax reimbursement decisions.

- For the cases 1.6 (1.6.2.1, 1.6.2.3), 1.7, and 1.11, Pursuant to Section 1, Part I, Part E of this Circular, the customs offices may deposit the collected tax amounts into separate accounts of the local Customs Department at the Treasury. Upon receiving the eligible subjects' written requests for tax reimbursement, the local Customs Department shall base themselves on the prescribed dossiers to examine, consider and decide on the tax reimbursement (or non-collection) and effect the tax reimbursement from the eligible subjects from the above-said deposit accounts at the Treasury. For cases 1.6.2.2, 1.6.2.4, 1.6.2.5 and 1.6.2.6, the local Customs Departments shall base themselves on the prescribed dossiers to examine, consider and decide on tax reimbursement (or non-collection) and carry out procedures for reimbursement of import tax money according to current regulations of the Finance Ministry.



- For the cases 1.8 and 1.9, Point 1, Section 1, Part 1 of this Circular, the local Customs Department shall base themselves on the prescribed dossiers to examine, consider and decide on tax reimbursement (or non-reimbursement) for the subjects.

The local Customs Department shall monitor for making subtraction from the reimbursement-eligible subjects payment tax amounts of the subsequent period. Where s

regulations, within 5 days (working days) after receiving the dossiers of request for tax payment of the subjects eligible for tax reimbursement, the agencies competent to consider the tax reimbursement must reply in writing to tax reimbursement requests, clearly stating the reasons therefore.

## II. RETROSPECTIVE COLLECTION OF EXPORT TAX, IMPORT TAX.

### 1. Cases where export tax, import tax must be retrospectively collected:

1.1. In cases where tax was exempt, temporarily exempt, reduced, refunded under the provisions of this Circular, if goods arose for purposes of exemption, temporary exemption, reduction or reimbursement, the tax amounts already exempted or reimbursed must be retrospectively collected in full, except for cases where competent State bodies permit the assignment with tax exemption, temporary exemption, reduction or reimbursement under the current regulations.

1.2. Where tax payers make mistakes in export goods or import goods declarations, tax must be collected retrospectively for one year counting back from the date of registering the export, import goods declaration to the date of detecting such mistakes in calculation, with correct declaration of goods appellations but wrong application codes of the tax table due to objective factors (such as tax policies change unclear, complicated classification of export, import goods,...).

1.3. In case of tax frauds or evasion, the due tax amounts and fines must be collected retrospectively for 5 years counting back from the date of detecting such tax frauds or evasion. All cases of tax frauds or evasions must be subject to retrospective tax collection (excluding two cases of retrospective collection mentioned in 1.1 and 1.2 above).

2. The bases for export or import tax calculation for retrospective collection shall be tax calculation prices, tax rates and the applicable exchange rates as prescribed at the time the competent State bodies permit the change of purposes of tax exemption, temporary exemption, reduction, reimbursement and now tax to be paid for case 1.1 and at the time of registering the previous export or import goods declarations for cases 1.2 and 1.3.

3. The time limit for tax arrear payment deadline is two days (working days) after the competent State bodies permit the change of exemption, temporary exemption, reduction of reimbursement purposes and now tax must be paid, for case 1.1, and after the detection of frauds mistakes, for case 1.2 or after the detection of tax frauds or evasion for case 1.3.

4. The time limit for tax payment is 10 days after the competent State bodies sign the decision on tax retrospective collection. If past the above-prescribed time limit, the tax payers still fail to pay tax, they shall be sanctioned for tax-related administrative violations according to the current regulations.

5. The agencies which detect tax mistakes, frauds, evasion (customs offices, tax offices) are competent to issue decisions to retrospectively collect tax for every specific case and send them to the tax payers.

## G. COMPLAINTS AND VIOLATION HANDLING .

### I. COMPLAINTS AND SETTLEMENT OF COMPLAINTS.

1. Organizations and individuals have the right to complain about competent State bodies' decisions related to export tax, import tax according to law provisions. The written complaints must clearly state the grounds and reasons for their complaints. Pending the settlement of their complaints, the complainants shall still have to pay the tax and fine amounts fully and on time according to the notices on the decisions of the competent State bodies.

2. The order for settlement of complaints to export tax, import tax shall comply with the provisions of the December 2, 1998 Law on Complaints and Denunciations and the June 15, 2004 Law Amending and Supplementing a Number of Articles of the Law on Complaints and Denunciations.

3. The complaint-settling agencies at all levels may refuse to receive complaints of the cases where their complaints and notify the details of the cases where their complaints are made without reasons, with unclear reasons, or made beyond the prescribed levels.

4. Where complaints are not settled, the complaint-settling agencies must clearly state the reasons therefore and notify in writing such the complaints within the law-prescribed time limit.

5. The time limit and procedures for lodging complaints, settling complaints, and the competence for settling complaints shall comply with the provisions of legislation on complaints and other relevant law provisions.

## II. HANDLING OF VIOLATION

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