

ORDER No. 15/2005/L-CTN OF JUNE 27, 2005, ON THE PROMULGATION OF LAW

THE PRESIDENT OF THE SOCIALIST REPUBLIC OF VIETNAM

Pursuant to Article 103 and Article 106 of the 1992 Constitution of the Socialist Republic of Vietnam, which was amended and supplemented under Resolution No. 51/2001/QH10 of December 25, 2001, of the Xth National Assembly, the 10th session;

Pursuant to Article 91 of the Law on Organization of the National Assembly;

Pursuant to Article 50 of the Law on Promulgation of Legal Documents,

HEREBY PROMULGATES

The Law on Import Tax and Export Tax,

which was passed on June 14, 2005, by the XIth National Assembly of the Socialist Republic of Vietnam at its 7th session.

President of the Socialist Republic of Vietnam

TRAN DUC LUONG

LAW ON IMPORT TAX AND EXPORT TAX

(No. 45/2005/QH11 of June 14, 2005)

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam, which was amended and supplemented under Resolution No. 51/2001/QH10 of December 25, 2001, of the Xth National Assembly, the 10th session;

This Law provides for import tax and export tax.

Chapter I

GENERAL PROVISIONS

Article 1.- Governing scope

This Law provides for import tax and export tax applicable to goods imported or exported through Vietnam's border-gates or borders; goods sold, purchased or exchanged by border residents and other sold, purchased or exchanged goods, which are considered import or export goods.

Article 2.- Tax-liable objects

Except for goods defined in Article 3 of this Law, goods in the following cases shall be liable to import tax or export tax:

1. Goods imported or exported through Vietnam's border-gates or borders;
2. Goods brought from the domestic market into non-tariff zones or from non-tariff zones into the domestic market.

Article 3.- Objects not liable to tax

Goods in the following cases shall not be liable to import tax or export tax:

1. Goods in transit or being transported across Vietnam's border-gates or borders; goods transferred through border-gates as provided for by the Government;

2. Humanitarian aid, non-refundable aid;
3. Goods exported from non-tariff zones to foreign countries, goods imported from foreign countries into non-tariff zones for use in non-tariff zones only, and goods transported from one non-tariff zone to another;
4. Goods being petroleum portions paid to the State in value as natural resource tax when exported.

Article 4.- Taxpayers

Organizations and individuals that have import or export goods being tax-liable objects defined in Article 2 of this Law are payers of import tax or export tax.

Article 5.- Interpretation of terms

In this Law, the following phrases shall be construed as follows:

1. Non-tariff zones mean economic areas lying within the Vietnamese territory which are determined by geographical boundaries and set up under decisions of the Prime Minister; the goods sale, purchase and exchange between these zones and outside areas constitute import and export relations.
2. Taxation safeguard measures mean measures to be applied to goods of a certain kind excessively imported into Vietnam in order to prevent or limit material injury to a domestic manufacturing industry.
3. Excessive import of goods means the import of goods with a volume, quantity or value increasing unexpectedly in absolute or relative quantity against the volume, quantity or value of similar or directly competitive home-made goods.
4. Absolute tax means tax fixed in a certain money amount on a unit of import or export goods.
5. Movable assets mean appliances and belongings in service of daily-life and working activities brought along by individuals, families or organizations when they stop residing or operating in Vietnam or foreign countries.
6. Goods sold, purchased or exchanged by border residents mean goods in service of production and daily-life activities of border residents.

Article 6.- Application of treaties

In cases where treaties to which the Socialist Republic of Vietnam is a contracting party contain provisions on import tax and export tax different from those of this Law, the provisions of such treaties shall apply.

Article 7.- Tax on goods sold, purchased or exchanged by border residents

The Government shall, based on the provisions of this Law, provide for the imposition of import tax or export tax on goods sold, purchased or exchanged by border residents, suitable to each period.

Chapter II

TAX CALCULATION BASES AND TARIFF

Article 8.- Tax calculation bases, tax calculation methods and tax payment currencies

1. The bases for calculating import tax and export tax are the unit volume of each actually imported or exported goods item, inscribed in the customs declarations, tax calculation

prices, and tax rates in percentage (%); for goods items subject to absolute tax, the tax calculation bases are the unit volume of each actually imported or exported goods item inscribed in the customs declarations, and the absolute tax rate provided for a goods unit.

2. Tax calculation methods are specified as follows:

a/ The payable import tax or export tax amount shall be equal to the unit volume of each actually imported or exported goods item inscribed in the customs declarations multiplied by the tax calculation price and the tax rate of each item stated in the Tariff at the time of tax calculation;

b/ For goods items subject to absolute tax, the payable import tax or export tax amount shall be equal to the unit volume of each actually imported or exported goods item inscribed in the customs declarations multiplied by the absolute tax rate provided for a goods unit at the time of tax calculation.

3. The tax payment currency is the Vietnamese dong; in cases where it is permitted to pay tax in foreign currencies, tax must be paid in freely convertible currencies.

Article 9.- Tax calculation prices and tax calculation exchange rates

1. For export goods, the tax calculation prices are the contractual sale prices at the exporting border-gates.

2. For import goods, the tax calculation prices are the actually paid prices at the first importing border-gate under contracts, in conformity with international commitments.

3. The exchange rates between Vietnam dong and foreign currencies used for determination of tax calculation prices are the exchange rates announced by the State Bank of Vietnam at the time of tax calculation.

The Government shall specify the determination of tax calculation prices provided for in this Article.

Article 10.- Tax rates

1. Tax rates applicable to export goods shall be specified for each goods item in the Export Tariff.

2. Tax rates applicable to import goods include preferential tax rates, special preferential tax rates and ordinary tax rates:

a/ The preferential tax rates shall apply to import goods originating from countries, groups of countries or territories, which apply the most favored nation treatment in their trade relations with Vietnam;

b/ The special preferential tax rates shall apply to import goods originating from countries, groups of countries or territories, which apply special preferences on import tax to Vietnam;

c/ The ordinary tax rates shall apply to import goods originating from countries, groups of countries or territories, which do not apply the most favored nation treatment or special preferences on import tax to Vietnam. The ordinary tax rates shall not be 70% higher than the preferential tax rates of the same goods items specified by the Government.

Article 11.- Taxation safeguard measures, anti-dumping, anti-subsidy and anti-discrimination in the import of goods

Apart from being subject to tax according to the provisions of Clause 2, Article 10 of this Law, import goods shall also be subject to one of the following taxation measures:

1. Raising the import tax rates, for goods excessively imported into Vietnam according to the provisions of law on safeguard in the import of foreign goods into Vietnam;
2. The anti-dumping tax, for imports dumped into Vietnam according to the provisions of law on anti-dumping of imports into Vietnam;
3. The anti-subsidy tax, for subsidized goods imported into Vietnam according to the provisions of law on anti-subsidy for imports into Vietnam;
4. The anti-discrimination tax, for goods imported into Vietnam from countries, groups of countries or territories, which practice discrimination with regard to import tax or apply other discriminatory measures, according to the provisions of law on the most favored nation treatment and the national treatment in international trade.

Article 12.- Competence to promulgate tariffs and tax rates

1. The Government shall propose the National Assembly Standing Committee to promulgate the Export Tariff according to the list of tax-liable commodity groups and tax rate bracket for each commodity group, the Preferential Import Tariff according to the list of tax-liable commodity groups and preferential tax rate bracket for each commodity group; provide for taxation safeguard measures, anti-dumping tax, anti-subsidy tax and anti-discrimination tax.

The Prime Minister shall decide on goods items subject to the absolute tax and the absolute tax rates in case of necessity.

2. Based on the Export Tariff according to the list of tax-liable commodity groups and tax rate bracket for each commodity group and the Preferential Import Tariff according to the list of tax-liable commodity groups and preferential tax rate bracket for each commodity group, promulgated by the National Assembly Standing Committee, the Minister of Finance shall provide the export tax rate, the import tax rate for each goods item according to procedures prescribed by the Government, ensuring the following principles:

- a/ Being compatible with the list of tax-liable commodity groups and within the tax rate brackets promulgated by the National Assembly Standing Committee;
- b/ Contributing to ensuring State budget revenues and stabilizing the market;
- c/ Protecting the domestic production in a selective and conditional manner for a certain period of time in conformity with treaties to which the Socialist Republic of Vietnam is a contracting party.

Chapter III

TAX DECLARATION AND PAYMENT

Article 13.- Responsibilities of taxpayers

Payers of import or export tax shall have to fully, accurately and transparently declare tax and bear responsibility before law for their declaration contents, submit customs declarations to customs offices, and calculate and pay tax into the State budget.

Article 14.- Tax calculation time

The time for calculating import tax and export tax shall be the time when taxpayers register customs declarations with customs offices.

Import tax and export tax shall be calculated according to tax rates, tax calculation prices and exchange rates used for tax calculation according to the exchange rates announced by the State Bank of Vietnam at the time of tax calculation.

Article 15.- Time limits for tax payment

1. Time limits for payment of import tax and export tax are provided for as follows:

a/ For export goods, it is thirty days as from the date the taxpayers register customs declarations;

b/ For import goods being consumer goods, the import tax must be fully paid before the receipt of goods; in cases where the payable tax amounts are guaranteed, the time limit for tax payment shall be the guarantee duration, which, however, must not exceed 30 days as from the date the taxpayers register customs declarations. Responsibilities of guaranteeing organizations shall comply with the provisions of Point b, Clause 2 of this Article.

c/ For import goods being supplies and raw materials for the production of export goods, the time limit for tax payment shall be two hundred and seventy five days as from the date the taxpayers register customs declarations; in special cases, the time limit for tax payment may be longer than two hundred and seventy five days to suit the production cycle as well as supply and raw material reserves of enterprises as provided for by the Government;

d/ For goods temporarily imported for re-export or temporarily exported for re-import, the time limit for tax payment shall be fifteen days as from the deadline for temporary import for re-export or temporary export for re-import, as provided for by competent State agencies;

e/ Apart from the cases defined at Point c and Point d, Clause 1 of this Article, the time limit for tax payment for import goods shall be thirty days as from the date the taxpayers register customs declarations.

2. Taxpayers who meet one of the following two conditions shall be entitled to apply the tax payment time limits defined at Points c, d and e, Clause 1 of this Article:

a/ Having conducted import or export activities for at least three hundred and sixty five days, counting to the date of registration of customs declarations, being certified by customs offices as having neither committed acts of trade frauds or tax evasion nor owed overdue tax or fine debts, and having well observed the financial reporting regimes provided for by law;

b/ Having their payable tax amounts guaranteed by credit institutions or other organizations operating under the Law on Credit Institutions. In cases where these amounts are guaranteed, the time limits for tax payment shall comply with the guarantee duration, which, however, must not exceed the time limits defined at Points c, d and e, Clause 1 of this Article. Past the guarantee duration or tax payment time limits, if taxpayers still fail to pay tax, the guaranteeing organizations shall have to pay tax amounts and fines for delayed payment on behalf of taxpayers.

In cases where taxpayers fail to meet the conditions provided for in this Clause, they must fully pay tax before receiving goods.

Chapter IV

TAX EXEMPTION, REDUCTION AND REIMBURSEMENT AND COLLECTION OF TAX ARREARS

Article 16.- Tax exemption

Import goods or export goods shall be exempt from import tax or export tax in the following cases:

1. Goods temporarily imported for re-export or temporarily exported for re-import for participation in exhibitions, trade fairs or goods display; machinery, equipment and working devices temporarily imported for re-export or temporarily exported for re-import in service of work within a certain period of time;

2. Goods being movable assets according to the Government's regulations;

3. Import and export goods of Vietnam-based foreign organizations or individuals entitled to diplomatic privileges or immunities within the norms prescribed by the Government in accordance with treaties to which the Socialist Republic of Vietnam is a contracting party;

4. Goods imported for processing for foreign partners then exported or goods exported to foreign countries for processing for Vietnam then re-imported under processing contracts;

5. Import and export goods within the duty-free luggage quotas of persons on entry or exit under the Government's regulations;

6. Goods imported to create fixed assets of projects entitled to investment incentives or investment projects funded with official development assistance (ODA) capital sources, including:

a/ Equipment and machinery;

b/ Special-use means of transport included in technological chains and means of transport used for transporting workers;

c/ Components, details, parts, spare parts, fittings, moulds and accessories accompanying machinery, equipment and special-use means of transport defined at Points a and b of this Clause;

d/ Raw materials and supplies used for manufacture of equipment and machinery included in technological chains or for manufacture of components, details, parts, spare parts, fittings, moulds and accessories accompanying equipment and machinery defined at Point a of this Clause;

e/ Building materials which cannot be produced at home;

f/ Goods being equipment and devices imported for the first time according to a list prescribed by the Government for investment projects on hotels, office buildings, apartments for rent, dwelling houses, trade and technical service centers, department stores, golf courses, tourist resorts, sport centers, recreation and entertainment sites, medical examination and treatment, training, cultural, financial, banking, insurance, audit, and consultancy service establishments.

The exemption of import tax for import goods defined at Points a, b, c, d and e of this Clause shall also apply to cases of expanding the scale of projects or replacing or renewing technologies.

7. Goods imported in service of petroleum activities, including:

a/ Equipment, machinery, spare parts and special-use means of transport necessary for petroleum activities;

b/ Supplies necessary for petroleum activities, which cannot be produced at home;

8. Goods imported for direct use in activities of scientific research and technological development, including machinery, equipment, spare parts, supplies and means of transport, which cannot be produced at home, technologies which cannot be created at home; scientific documents, books and newspapers;

9. Raw materials, supplies and accessories imported for production activities of investment projects on the list of domains where investment is particularly encouraged or the list of geographical areas meeting with exceptional socio-economic difficulties shall be exempt from import tax for five years after the commencement of production;

10. Goods produced, processed, re-cycled or assembled in non-tariff zones without the use of raw materials and accessories imported from foreign countries, when being imported into the domestic market; for cases of using raw materials and accessories imported from foreign countries, when goods are imported into the domestic market, only import tax on imported raw materials and supplies constituting these goods must be paid;

11. Other specific cases decided by the Prime Minister.

Article 17.- Consideration for tax exemption

Import or export goods in the following cases shall be considered for exemption of import tax or export tax:

1. Special-use goods imported in direct service of national defense, security, or education and training; special-use goods imported in direct service of scientific research, except for the cases defined in Clause 8, Article 16 of this Law;

2. Goods being gifts, presents or samples of foreign organizations or individuals for Vietnamese organizations or individuals within the norms prescribed by the Government.

Article 18.- Tax reduction

Import or export goods which are damaged or lost while being under customs offices' supervision, with certification by competent expertise agencies or organizations, shall be eligible for tax reduction.

The levels of tax reduction shall correspond to the actual loss or damage of goods.

Article 19.- Tax reimbursement

1. Taxpayers shall have their paid tax amounts reimbursed in the following cases:

a/ Import goods being in warehouses or storing yards at the border-gates under customs offices' supervision, for which import tax has already been paid, are re-exported;

b/ Import or export goods, for which import tax or export tax has been paid, are not imported or exported;

c/ Goods, for which import tax or export tax has been paid, are actually imported or exported in a smaller quantity;

d/ Goods being raw materials or supplies imported for the production of export goods, for which import tax has been paid;

e/ Goods temporarily imported for re-export or temporarily exported for re-import, for which import tax or export tax has been paid, except for cases eligible for tax exemption defined in Clause 1, Article 16 of this Law;

f/ Export goods, for which export tax has been paid, are to be re-imported;

g/ Import goods, for which import tax has been paid, are to be re-exported;

h/ Import goods being machinery, equipment, devices, and means of transport of organizations and/or individuals, which are permitted to be temporarily imported for re-export for the execution of investment projects, work construction and installation, in service of production or for other purposes, for which import tax has been paid.

2. In cases where there are mistakes in tax declaration and calculation, the overpaid tax amount shall be refunded, provided that these mistakes are made within three hundred and sixty five days backwards, counting from the date of detecting the mistakes.

Article 20.- Responsibility and time limit for tax reimbursement

1. Within fifteen days after receiving complete dossiers of application for tax reimbursement, the State agencies competent to consider tax reimbursement shall have to effect tax reimbursement to subjects eligible therefor; in cases where the dossiers are incomplete or invalid as required by law for tax reimbursement, within five working days after receiving the dossiers of application for tax reimbursement of subjects eligible therefor, the State agencies competent to consider tax reimbursement shall have to issue written requests for supplementation of the dossiers.

2. Past the time limit defined in Clause 1 of this Article, if the tax reimbursement is delayed due to the faults of the State agencies competent to consider tax reimbursement, apart from the to-be-reimbursed tax amounts, the interests thereon must also be paid for the overdue period at the lending interest rates of commercial banks at the time of tax reimbursement.

Article 21.- Collection of tax arrears

Taxpayers who have their goods eligible for tax exemption or consideration for tax exemption as defined in Article 16 and Article 17 of this Law, but later use such goods for purposes other than those eligible for tax exemption or consideration for tax exemption, shall have to fully pay tax.

The Government shall specify cases subject to collection of tax arrears, bases for calculation of tax arrears and time limits for declaration and payment of tax arrears defined in this Article.

Chapter V

COMPLAINTS AND HANDLING OF VIOLATIONS

Article 22.- Complaints and settlement of complaints

In cases where taxpayers disagree with decisions of customs offices on the payable tax amounts, fine amounts and sanctioning forms, they still have to fully pay taxes and fines and abide by the sanctioning forms, and at the same time, may lodge their complaints with competent State agencies as provided for by the law on complaints and denunciations.

Article 23.- Handling of tax-related violations by taxpayers

Taxpayers that violate the provisions of this Law shall be handled as follows:

1. If they pay taxes or fines later than the payment deadline or the deadline inscribed in the decisions on handling of tax-related violations, they shall, apart from having to fully pay taxes on fines, have to pay a fine equal to 0.1% (zero point one percent) of the late paid amounts for each day of delayed payment; if the delayed payment prolongs for more than ninety days, they shall be coerced to pay them according to the provisions of Clause 4 of this Article;

2. If they fail to declare and pay taxes in strict accordance with the provisions of this Law, they shall, depending on the nature and seriousness of their violations, be administratively handled for tax-related violations;

3. If they falsely declare or evade taxes, they shall, apart from having to fully pay taxes according to the provisions of this Law, depending on the nature and seriousness of their violations, be subject to a fine equal to one or five times the evaded tax amounts;

4. If they fail to pay taxes or fines according to the decisions on handling of tax-related violations, they shall be forced to do so through the following measures:

a/ Their deposits at banks, other credit institutions or State treasuries are deducted for payment of taxes or fines. Banks, other credit institutions or State treasuries shall have to make deductions from deposit accounts of taxpayers to pay taxes and fines to the State budget according to decisions of the customs offices or competent State agencies on handling of tax-related violations;

b/ Customs offices where customs declarations are registered may temporarily seize goods or distrain property according to the provisions of law in order to ensure the full collection of deficit tax or fine amounts. Past thirty days after the customs offices issue decisions on the temporary seizure of goods or the distraint of property, if taxpayers still fail to fully pay taxes or fines, the customs offices may auction such goods or property according to the provisions of law in order to ensure the full collection of taxes or fines;

c/ Customs offices shall not carry out import procedures for the next goods shipment of taxpayers until they fully pay taxes or fines;

5. If detecting that there is a tax fraud or evasion, customs offices shall have to collect all tax and fine arrears incurred within five years back from the date of inspecting and detecting the tax fraud or tax evasion; in cases where there are tax-related mistakes, customs offices shall have to collect tax arrears or refund wrongly-calculated tax amounts within three hundred and sixty five days back from the date of inspecting and detecting such mistakes. Within sixty days as from the date of registering customs declarations, if taxpayers discover errors or mistakes by themselves and actively pay the deficit tax amounts into the State budget, they shall be exempt from sanctions;

6. Those who commit acts of tax evasion in large amounts or have been administratively sanctioned for tax evasion but still commit violations shall be examined for penal liability according the provisions of law.

Article 24.- Handling of violations committed by customs officers or other concerned individuals

1. Customs officers or other individuals who abuse their positions and/or powers to appropriate or embezzle tax money shall have to refund to the State the whole appropriated or embezzled amounts and, depending on the nature and seriousness of their violations, be administratively sanctioned or examined for penal liability according to the provisions of law.

2. Customs officers who show sign of irresponsibility, deliberately act against regulations, cover up violators or commit other acts of violating the provisions of this Law shall, depending on the nature and seriousness of their violations, be disciplined, administratively sanctioned or examined for penal liability according to the provisions of law; if causing damage, they must pay compensation therefor according to the provisions of law.

Chapter VI

ORGANIZATION OF IMPLEMENTATION

Article 25.- Competence and responsibility of the Government

The Government shall perform the uniform management over the collection of import tax and export tax, provide for the competence and procedures for tax exemption, consideration for tax exemption, tax reimbursement, collection of tax arrears and handling of tax-related violations defined in Articles 16, 17, 18, 19, 20, 21 and 23 of this Law.

Article 26.- Responsibilities of the Minister of Finance and presidents of the provincial/municipal People's Committees

1. The Minister of Finance shall have to direct, organize and manage the collection of import tax and export tax on import and export goods.
2. The presidents of the provincial/municipal People's Committees shall have to direct the coordinated collection of import tax and export tax in their respective localities.

Article 27.- Responsibility of customs offices

Customs offices shall have to inspect and collect taxes according to the provisions of this Law and the Customs Law.

Chapter VII

IMPLEMENTATION PROVISIONS

Article 28.- Implementation effect

1. This Law takes effect as from January 1, 2006.
2. To annul the 1991 Law on Import Tax and Export Tax, the 1993 Law Amending and Supplementing a Number of Articles of the Law on Import Tax and Export Tax, the 1998 Law Amending and Supplementing a Number of Articles of the Law on Import Tax and Export Tax; to annul provisions on import tax and export tax in Article 25 of the Law on Domestic Investment Promotion, Article 47 of the Law on Foreign Investment in Vietnam, Clause 2, Article 42 of the Law on Science and Technology, and Article 34 of the Petroleum Law.
3. Projects entitled to investment incentives, which have already been granted investment licenses or certificates of investment preferences with preferential import tax and/or export tax levels higher than the levels defined in this Law, shall continue enjoying those preferential levels; in cases where the investment licenses or certificates of investment preferences provide for preferential import tax or export tax levels lower than those provided for in the Law, the preferential levels provided for in this Law shall apply for the remaining preferential period of projects.

Article 29.- Detailing and guidance of implementation

The Government shall detail and guide the implementation of this Law.

This Law was passed on June 14, 2005 by the XIth National Assembly of the Socialist Republic of Vietnam at its 7th session.

Chairman of the National Assembly

NGUYEN VAN AN