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CIRCULAR

Guiding import, export, processing activities, the liquidation of import goods and consumption of products of foreign-invested enterprises defined in Decree No. 108/2006/ND-CP dated September 22, 2006 of the Government detailing and guiding the implementation of a number of articles of the Investment Law

Pursuant to the Government's Decree No. 29/2004/ND-CP dated January 16, 2004 on the functions, tasks, powers and organizational structure of the Ministry of Trade;

Pursuant to Decree No. 108/2006/ND-CP dated September 22, 2006 of the Government detailing and guiding the implementation of a number of articles of the Investment Law;

Pursuant to Decree No. 12/2006/ND-CP dated January 23, 2006 of the Government detailing the implementation of the Commercial Law regarding international goods sale and purchase and goods sale, purchase, processing and transit activities with foreign countries;

After getting consensus with the relevant ministries, the Ministry of Trade guides the procedures on import, export, processing, liquidation of import goods and consumption of products of foreign invested enterprises according to the Investment Law as follows:

I. SCOPE OF REGULATION AND SUBJECT OF APPLICATION

- This Circular guides the procedures on export of products; import of machinery, equipment, materials, spare parts, components and other goods in service of investment activities; goods processing, liquidation of import goods and consumption of products of wholly foreign invested enterprises, joint ventures, foreign parties to business cooperation contracts (hereinafter referred to as foreign invested enterprises).

- Goods sale and purchase activities and other activities directly related to goods sale and purchase of foreign invested enterprises as defined in the Commercial Law are not subject to the scope of regulation of this Circular.

II. GENERAL PROVISIONS

1. Export

- Foreign invested enterprises have rights to directly export or entrust the export of their products.
- For goods exported under the licenses granted by the Ministry of Trade and export goods subject to specialized management, the export procedures shall comply with the provisions of Decree No. 12/2006/ND-CP dated January 23, 2006.

2. Import

a) Import goods

- Foreign invested enterprises shall directly import or entrust the import of machinery, equipment, materials, spare parts, components, detail components and other goods to carry out the investment activities in conformity with the targets of investment projects defined in the Investment Licenses or Investment Certificates.
- For goods imported under the permits of the Ministry of Trade and import goods subject to the specialized management, the import procedures shall comply with the provisions of Decree No. 12/2006/ND-CP dated January 23, 2006.

b) Import conditions

- Import goods to be used as fixed assets and in service of production activities of foreign invested enterprises must be suitable with the targets and scales of investment projects.
- Import goods to serve as samples in service of teaching or displaying and introducing at the showrooms and kiosks of the foreign invested enterprises must be suitable with the training scale or scale of the showrooms or exhibitions.

3. Other import and export activities

a) Temporary import, re-export

- Foreign invested enterprises may temporarily import the following goods to implement the investment projects in Vietnam:

+ Machinery, equipment, means of transportation, samples and patterns to implement the processing contracts or to serve the production activities in the mode of leasing and borrowing.

+ Goods for showing in the trade fairs, exhibitions and showrooms, for production research or to serve as samples for teaching and training.

+ Exported products for guarantee, repair or replacement to re-export.

- For goods temporarily imported under the permits of the Ministry of Trade, or under the specialized management, the import procedures shall comply with the provisions of Decree No. 12/2006/ND-CP dated January 23, 2006.

- For temporarily imported goods consumed in Vietnam's market, foreign invested enterprises must comply with the provisions of Decree No. 12/2006/ND-CP dated January 23, 2006 and carry out tax obligations in accordance with the provisions of law.

- The term for temporary import and re-export shall be in accordance with the agreement of foreign invested enterprises with their partners and must register at the custom office.

b) Temporary export, re-import

- Foreign invested enterprises may temporarily export and re-import the following goods to implement the investment projects in Vietnam:

+ Machinery, equipment, means of transportation, samples and patterns in service of production activities of enterprises abroad, to implement processing contracts, or for guarantee, repair and replacement.

+ Goods for display at trade fairs and exhibitions.

- For goods temporarily exported under the permits of the Ministry of Trade, or under the specialized management, the export procedures shall comply with the provisions of Decree No. 12/2006/ND-CP dated January 23, 2006.

- For temporarily exported goods consumed in foreign markets, foreign invested enterprises must carry out tax obligations in accordance with the provisions of law.

- The term for temporary export and re-import shall be in accordance with the agreement of foreign invested enterprises with their partners and must register the term at the custom offices.

c) Import and export on the spot

- Foreign invested enterprises may export on the spot their goods produced in Vietnam with the following conditions:

- + Foreign invested enterprises export goods on the spot must sign export contracts, which clearly specify the delivery of goods in Vietnam according to appointments of the buyers being foreign traders;

- + Vietnamese traders or other foreign invested enterprises, which have demand to import on the spot must sign import contracts with foreign traders, which has signed contract to buy goods exported by the enterprises on the spot, which clearly specify the delivery of goods in Vietnam according to appointments of the sellers being foreign traders.

- Foreign invested enterprises may import on the spot machinery, equipment, instruments and materials for creating fixed assets and materials for the production with the following conditions:

- + Foreign invested enterprises import goods on the spot must sign import contracts with foreign traders, who have sign contract to buy goods from Vietnamese traders, which clearly specify the receipt of goods in Vietnam according to appointments of the sellers being foreign traders;

- + Vietnamese traders or foreign invested enterprises export goods on the spot must sign export contracts, which clearly specify the delivery of goods in Vietnam according to the buyers being foreign traders.

d) Goods imported for marketing and sale promotion

Foreign invested enterprises, which have been granted the Investment Licenses and Investment Certificate and have demand to import the same kind of goods as their products for marketing and product introduction in service of investment activities and for sale promotion, must register their import plans at the Ministry of Trade.

4. Liquidation of import goods

a) Foreign invested enterprises may liquidate import goods include: machinery, equipment, means of transportation, materials, and other import goods in the mode of: export, selling in the Vietnamese market, giving and destroying.

b) Import goods subject to the liquidation include:

- Materials and equipment leftover after completion of capital construction to set up enterprises;
- Machinery, equipment, means of transportation, materials and other goods when the enterprises are still operating;
- Assets of the enterprises after dissolvent or operation termination.

c) Conditions for liquidation of import goods:

The import goods shall only be liquidated when meeting the following conditions:

- For machinery, equipment and means of transportation:
 - + Out of the depreciation period;
 - + Be broken-down;
 - + To narrow the scale of production or change the operation objectives.
 - + To be replaced by new machinery, equipment and means of transportation.
- For materials and other goods:
 - + In excess and in stock;
 - + Not meet quality standards;
 - + Not suitable with the production activities of the enterprises.

5. Processing

a) Foreign invested enterprises may receive processing and re-processing products to be suitable with the objectives defined in the Investment Licenses or Investment Certificates:

- To receive processing for foreign traders, receive processing and re-processing for domestic traders;

- To lease domestic processors, order processing from foreign countries for one or more stages of production, in which machinery and equipment of the foreign invested enterprises still not suitable enough to meet the quality or quantity demand.

b) Processed goods must not be in the List of goods banned from export and temporarily ceased from export; goods banned from import and temporarily ceased from import. For goods exported and imported under the licenses, foreign invested enterprises may only sign processing contracts after getting the licenses of the Ministry of Trade.

c) Foreign invested enterprises may only carry out processing activities after completion of investment in capital construction to set up their enterprises and start their production operations.

6. Sale and purchase of goods between export processing enterprises and the domestic market

a) Sale and purchase of goods between the export processing enterprises and the domestic market shall be comply with the provisions in Article 15 of Decree No. 108/2006/ND-CP dated September 22, 2006 of the Government. Goods sold or purchased by export processing enterprises in the domestic market must not be in the List of goods subject to import and export prohibition defined in Decree No. 12/2006/ND-CP dated January 23, 2006. Goods subject to the management under the licenses or specialized management must get written approval from the Ministry of Trade before purchasing or selling to the domestic market.

b) The sale and purchase relation between the export processing enterprises in the domestic market is the import- export relation. Export processing enterprises may directly carry out the import, export procedures at the custom offices, and not have to carry out procedures for approval of import plans at the Management Boards of the export processing zones, industrial parks, hi-tech parks, economic zones and trade zones.

c) The selling of scraps and wastes attained from the production process shall comply with the guidance of the environmental management agencies.

d) The purchasing of stationery and goods in the domestic market for the daily life of the export processing enterprises shall not have to carry out customs procedures but have to register with the Management Boards of

export processing zones, industrial parks, hi-tech parks, economic zones and trade zones.

7. Consumption of products in the Vietnamese market.

a) Foreign invested enterprises may directly carry out wholesale, retail sales and consume their products produced in Vietnam through agents. The consumption of products of the enterprises shall not be limited by the consumption location and shall not be under the State control on the prices of goods and services. In case, where goods and services subject to the State management on price, then the price bracket published by the competent State agencies shall apply.

In case where goods subject to the distribution according to the separate stipulations of the State, then those separate stipulations shall apply.

b) Foreign invested enterprises, which have been granted Investment Licenses or Investment Certificates, in which specified that they may act as agents for selling of products produced in Vietnam for other enterprises, then they may continue to be agents for consumption of products. For other cases, the Ministry of Trade shall consider each.

III. PROCEDURES AND DOSSIERS

1. Dossiers and procedures for import, export and processing with foreign partners, liquidation of import goods, tax exemption for import goods.

a) Foreign invested enterprises may directly carry out procedures for import, export, processing with foreign partners, tax exemption for import goods, liquidation of import goods, which have been exempt from import tax at the custom offices.

The liquidation of import goods subject to import tax decided by the foreign invested enterprises on the basis of suitability with the conditions for liquidation of import goods specified at Point c, Section 4, Part II of this Circular.

The liquidation of import goods under the separate import rights for the state trading enterprises shall only be carried out after getting the written acceptance from the Ministry of Trade.

b) Dossiers for import, export and processing with foreign countries and tax exemption shall comply with the provisions of legislation on customs.

c) Dossiers of liquidation of import goods, which have been exempted from import tax submitted to the customs office include:

- The liquidation of import materials and equipment in excess after the completion of capital construction.

- + The written proposal for liquidation (enclosed with the list of goods proposed to be liquidated), which clearly specifies the mode of liquidation.

- The liquidation of machinery, equipment, means of transportation and other goods when the enterprises are still operating:

- + The written proposal for liquidation of the enterprise, which clearly specifies the mode of liquidation and list of machinery, equipment, means of transportation, materials and other goods proposed to be liquidated;

- + The list of depreciation of machinery, equipment, means of transportation or appraisal of damaged machinery, equipment, means of transportation;

- The liquidation of machinery, equipment, materials and other goods after dissolvent or operation termination of the foreign invested enterprises:

- + The written proposal for liquidation of the enterprise, which clearly specifies the mode of liquidation and list of machinery, equipment, means of transportation, materials and other goods proposed to be liquidated;

- + The list of depreciation of machinery, equipment, means of transportation or appraisal of machinery, equipment, means of transportation;

- + The decision of the Investment License or Investment Certificate granting agencies on approval of dissolvent or operation termination of the enterprise;

- + The plan for liquidation of assets.

d) Dossiers for liquidation of import goods under the separate import rights of the State trading enterprises to be sent to the Ministry of Trade include:

- + The written proposal for liquidation of the enterprise enclosed with the list of goods proposed to be liquidated;

- + The explanation on the reasons for liquidation and detail mode of liquidation (clearly specifies the plan for destroying, if liquidate in the mode of destroying, and clearly specifies the object of selling and giving if liquidate in the mode of selling and giving)

e) Dossiers for importing goods for marketing and sale promotion to be sent to the Ministry of Trade include:

- The written proposal for import enclosed with the List of import goods (name of goods, quantity, value);
- The explanation on import of goods for marketing and sale promotion (clearly specify the basis for determine quantity and value of goods proposed to be imported).
- The written document certifying the registration for implementation of sale promotion program (for goods imported for sale promotion).
- Copies of Investment License or Investment Certificate.

2. Term of settlement of the Ministry of Trade

Within 5 working days as from the date of receiving full dossier, the Ministry of Trade shall reply the enterprises on the acceptance or not acceptance of their proposals.

IV. IMPLEMENTATION PROVISIONS

1. This Circular takes effect 15 days after its publication on CONG BAO.
2. To annul Circulars No. 23/1999/TT-BTM dated July 26, 1999, No. 22/2000/TT-BTM dated December 15, 2000, No. 26/2001/TT-BTM dated December 4, 2001 and No. 01/2005/TT-BTM dated January 6, 2005 of the Ministry of Trade.

FOR THE MINISTER OF TRADE

VICE MINISTER

(Signed and sealed)

Le Danh Vinh

(This translation is for reference only)