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LEGAL UPDATE ON EXPORT-PROCESSING
ENTERPRISE MODEL

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Many foreign investors who specialize in commercial manufacturing to export and trade overseas, without consumption in the local market, intend to exercise their business activities under the Export-Processing Enterprise (**EPE**) model to enjoy tax incentives on Import and Export Taxes as well as on Value Added Tax of Vietnam.

Since the **EPE** is entitled to tax incentives in accordance with regulations applied to free trade zones as prescribed in laws on import and export duties, the Government increasingly tightens the criteria for this enterprise model.

→ Legal update on EPE model

Overall view of tax incentives for EPE model

TAXES	EPES	NON-EPES
CORPORATE INCOME TAX	<ul style="list-style-type: none"> - Current standard CIT rate: 20 per cent - In general, CIT incentives will be granted to new investment projects based on stipulated sectors or locations (i.e. economic zones (EZs), high-tech zones (HTZs), certain industrial zones (IZs) and difficult socio-economic areas) and project size. - Common incentivized CIT rates are 10 per cent in 15 years and 17 per cent in 10 years. - Common tax exemption and tax reduction are: tax exemption in 4 years with 50 per cent reduction in 9 years, and tax exemption in 2 years with 50 per cent tax reduction in 4 years. 	
PERSONAL INCOME TAX	NO SPECIAL INCENTIVES APPLICABLE FOR EPES	
VALUE ADDED TAX	<ul style="list-style-type: none"> - Not subject to VAT for goods purchased/sold between non-tariff zones and foreign countries, or between non-tariff zones. - 0 per cent VAT is applicable to (i) goods sold and (ii) services directly provided to organizations and individuals in non-tariff zones. - It should be noted that different interpretations might be applied by different tax authorities with regard to the application of 0 per cent VAT for rental services provided directly to organizations and individuals in non-tariff zones (house rental, office rental, warehouse rental,...). 	<ul style="list-style-type: none"> - Generally, subject to VAT. Certain cases are not subject to VAT or VAT declaration. - Not subject to VAT: raw materials imported for the purpose of manufacturing or processing of exported goods as per manufacturing or processing for export contracts with foreign parties, goods temporarily imported and re-exported and goods temporarily exported and re-imported. - For enterprises engaged in manufacturing or processing of goods for export, VAT refund is applicable if the accumulated input VAT to be credited equals VND 300 mil or more.
IMPORT AND EXPORT TAXES	<ul style="list-style-type: none"> - Exempt for goods exported/imported between non-tariff zones and foreign countries, or between non-tariff zones. - Exempt for 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. 	<ul style="list-style-type: none"> - Generally, subject to import and export taxes. Certain exemptions are applied. - Notably, exemptions of import tax for goods imported for the purpose of manufacturing/ processing of goods for export.

**Non-tariff zones include EPZs, EPEs, warehouses and storing zones of goods pending duty payment, bonded warehouses, special economic-trade zones, trade-industrial zones, and other EZs which are established under Prime Minister decisions.*

→ Legal update on EPE model

Timeline for obtaining an Investment Registration Certificate may be prolonged due to new regulations

On May 22, 2018, the Vietnamese Government has promulgated Decree no. 82/2018/ND-CP on the management of industrial parks and economic zones ([DECREE 82](#)) which will take effect and subsequently substitute Decree no. 29/2008/ND-CP as of 10 July 2019. Decree 82 will add new requirements to the registration of an EPE. Accordingly, the investment registry shall be responsible for gathering an assessment of competent customs authorities on the ability to satisfy the requirements of customs inspection and supervision, before issuing the Investment Registration Certificate ([IRC](#)) or providing a written confirmation to foreign investors.

In accordance with relevant laws, the EPE is defined as a model of enterprise which is established and operated within an export processing zone, or an enterprise specializing in manufacturing exported products within an industrial park or economic zone. The EPE shall be specified in the IRC or in the written document issued by the competent investment registry in case of an exemption of IRC. The law does neither provide a definition of “specializing in manufacturing exported products” nor the way to determine if an enterprise is actually specializing in manufacturing exported products. However, according to some guidance provided by the Ministry of Finance ([MoF](#)) the EPE is required to export the full 100 per cent of products they have manufactured.

The EPE may either be located in export processing zones ([EPZs](#)) or industrial parks/economic zones. In case the EPE is not located in an EPZ, it is required to be separated from the outside area by fixed fences, to have ports, entrance and exit doors, and to fulfil requirements regarding the supervision and control by the customs authority, relevant agencies and related functional agencies in accordance with the regulations applicable to non-tariff areas as well as with regulations laid down in the legislation on import and export duty. Requirements concerning the supervision and control by the customs authority include the installation of CCTV and the implementation of a management system for raw materials and supplies for the production of exported goods.

Prior to Decree 82, the investor was supposed to be granted an IRC in which a certified EPE status was announced if he duly specified the corresponding requirements for foreign investors. The requirements with regard to fixed fences and to the installation of CCTV were subject to an inspection by the customs authority upon the enterprise starting to operate. This regulation has been changed under Decree 82.

In accordance with Decree 82, in order to be granted an IRC and a subsequent EPE certification, investors first need to obtain a “pre-approval” of the customs authorities confirming their compliance with the requirements with regard to a fixed fence, the installation of CCTV and the implementation of a management system for raw materials and supplies for the production of exported goods, as stipulated by Article 30.1 of the same decree. Notably, the investment registry shall be responsible for obtaining an assessment of the competent customs authority on the ability to satisfy the requirements of the stipulated inspection and supervision by the customs authority before issuing the IRC or providing any written confirmation to foreign investors.

However, the Government has not yet issued any specific regulations so far. With Decree 82 neither defining a timeline nor a detailed procedure with regard to the customs inspection and supervision requirements and the stipulated “pre-approval” by the customs authority, the issuance of IRC has been prolonged for an indefinite term. In practice, in order to provide for inspection and supervision to be workable, the customs authority requires the enterprise to install CCTV at each entrance door of the factory, to implement a management system for raw materials and supplies for the production of exported goods (i.e.: Vietnam Automated Cargo Clearance System Software). However, since at this stage the investor has not yet established a legal entity in Vietnam, the installation of CCTV may prove troublesome. The investor should consider this point upon dealing with the lessor in order to have the CCTV be installed by the lessor with the cost to be reimbursed by the investor later.

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The EPE model thwarted by uncertainties

Since the regulations of Decree 82 are not clear, and do give quite some room for confusion, it initiated some controversies and discussions. Decree 82 stipulates that the investment registry must obtain a confirmation from the competent customs authority before issuing an IRC. In practice, there are some investment registries in different provinces (i.e: Long An, Binh Duong, Vinh Phuc) which are of the opinion that the investor may be granted an IRC without EPE certificate.

After being established, the enterprise shall be in charge of installing a camera system and implementing a material management system. The customs authority will then inspect onsite and issue the confirmation of the enterprise matching all requirements in accordance with Decree 82. Subsequently, the enterprise will register to switch to the EPE model, and update the IRC afterwards. In such case, the newly set up enterprise may be granted a VAT refund for the construction period as well as for the time of operation, provided the supporting documents are submitted completely and properly. Otherwise, the company will have to wait until a clear and detailed guidance on EPE has been released, while the investment registry will grant the IRC afterward.

There is no legal base for this interpretation though, because it is not in line with the regulations of Decree 82. Enterprises adopting this procedure may face a gap period during which the enterprise is not entitled to tax incentives exclusively available for the EPE model. Moreover, the investor will have to carry out the application procedure for IRC and EPE twice. However, some foreign investors agreed with this solution nonetheless, in order to avoid further delays to their

investment plan. The MoF submitted Dispatch No.1728/BTC-TCHQ to the Ministry of Planning and Investment (MPI) to clarify the difficulties in establishing and operating EPEs. In addition, the MoF included numerous proposals relating to the requirements of a customs inspection and supervision to be added to Decree 82. Notably, EPEs have to be separated from the outside by a fixed fence system. The camera system has to operate 24/7 and has to show clear images of the goods being moved in and out of the factory, as well as of the manufacturing process itself. All data of the camera systems have to be stored for 12 months. Besides, the camera system has to be connected to the local customs authorities.

Furthermore, enterprises have to establish a management system monitoring the materials and supplies imported for manufacturing operations for export purposes, and to submit the records about imported and unused materials as well as on exported goods to the local customs authority. The dispatch also pointed out that as there have not yet been any specific regulations as to the requirements of a customs inspection and supervision, the MoF proposed that the MPI shall report to the prime minister to authorize the recognition of the enterprise as an EPE, in case the enterprise confirms that it complies with all conditions set up by the MoF, and subsequently assign the local customs authority to inspect the enterprise before allowing it to start operating.

Following this spirit, we may hope that the Government will issue regulations with detailed guidelines on short notice.

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