

Client Alert

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Vietnam Revises Certain Customs Valuation Methods for Imported and Exported Goods

Recently, the Ministry of Finance has issued Circular No. 205/2010/TT-BTC guiding Decree No. 40/2007/ND-CP dated 16 March 2007 of the Government on the customs valuation of imported and exported goods ("**Circular No. 205**").

This Circular took effect from 29 January 2011 and replaces Circular No. 40/2008/TT-BTC governing the same issues ("**Circular No. 40**").

Briefly, in comparison with Circular No. 40, Circular No. 205 contains the following new points and updates:

1. Customs valuation methods with respect to imported goods

The six principle methods used for determining dutiable price for imported goods remain unchanged. They still include, in sequence, the following:¹

- Transaction value method
- Transaction value of identical goods method
- Transaction value of similar goods method
- Deductive value method
- Computed value method
- Fall-back value method

The only major change is that Circular No. 205 allows the switch in sequence between deductive value method and computed value method in case the customs declarants file a request in writing.² In other words, the computed value method can be used prior to the deductive value method in case of a written request from the customs declarant. However, the

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¹ Article 12, Circular No. 205.

² Article 12, Circular No. 205.

Circular does not specify the process of approving this switch in sequence (e.g., when to file the request, who has the authority to approve the switch in sequence or it can be switched automatically after filing, etc.)

Furthermore, with respect to the transaction value method, besides the normal customs dossier, Circular No. 205 lists several documents (if they are available) to be submitted in case the price of goods is evaluated by this method. They include (i) documents proving that the special relationship between the purchaser and the seller does not affect the transaction value; (ii) documents related to the sum of money that the purchaser has to pay but not yet counted in the price specified in the commercial invoices; and (iii) documents related to any additional charges as adjustments to the price (if any).

2. Customs valuation methods with respect to exported goods

While Circular No. 40 stays silent as to specific customs valuation methods applied for exported goods, Circular No. 205 adds a separate part addressing this issue.

According to Circular No. 205, the principle for determining the dutiable price of exported goods shall be the practical selling price at the export bordergate (FOB price, DAF price), excluding insurance (I) and freight (F) in accordance with the relevant documents.

Specifically, the practical selling price at the export bordergate is the selling price written on the sales contracts or other forms of equal legality, commercial invoices and relevant documents of the consignments in accordance with actual exported goods.

In case of an illegal application dossier or inconsistency of the contents of the documents, customs agencies shall determine the dutiable value based on (i) the sequence of the sources of information, and (ii) documents and materials attached.

- First, the sources of information that need to be taken into account (in sequence) include:
 - ✓ The FOB price and DAF price of identical exported goods [and/or] similar exported goods;
 - ✓ The domestic selling price of identical exported goods [and/or] similar exported goods after deducting VAT, luxury tax (if any) and other legitimate costs arising before exporting goods at export bordergate; and

- ✓ Other information collected by customs officials after converting into FOB price and DAF price.
- Second, the documents and materials include:
 - ✓ The customs declaration of identical exported goods [and/or] similar exported goods as the basis for determining the dutiable value; or/and
 - ✓ The sales invoice of identical exported goods [and/or] similar exported goods issued or permitted to use by the Ministry of Finance; or/and
 - ✓ The documents used to convert to FOB price and DAF price as the basis for determining dutiable value.

3. Other regulations

Circular No. 205 contains six (06) new forms to be used during the process of customs valuation for imported and exported goods. They include:

- Form No. 1: The Notice of customs agencies to a company in case there are doubts as to the declared value and the dutiable value of the goods. In such form, customs agencies shall explain the basis for their doubts, and specify the dutiable price determined by them and the method used for such determination. If companies agree with the price determined by customs agencies under this form, they will need to pay duties accordingly. Otherwise, they are entitled to exercise their rights to request for consultations as provided under the Circular.
- Form No. 2: The Notice of customs agencies to a company with respect to the security amount for clearance of goods in case customs agencies delay the determination of dutiable value of such goods.
- Form No. 3: The Invitation of customs agencies to a company in case of a consultation.
- Form No. 4: The Notice of customs agencies to a company (and the relevant district-level customs department, if applicable) with respect to the final dutiable price determined by customs agencies in case (i) customs declarants agree with the price determined by customs agencies in accordance with Form No. 1; or (ii) consultations.

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- Form No. 5: The customs declaration form to be used by customs declarants with respect to official price of exported goods under forward contracts or adjustments (in the form of additional charges) of imported goods
- Form No. 6: The declaration form to be used by customs declarants with respect to the actual import of goods under contracts containing discounts.

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