

Reproduced with permission. Published January 27, 2022. Copyright © 2022 The Bureau of National Affairs, Inc. 800-372-1033. For further use, please visit <https://www.bloombergindustry.com/copyright-and-usage-guidelines-copyright/>

Trading in Vietnam—Regulations for Foreign Direct Invested Entities



BY TRAN NGUYEN MONG VAN

Foreign direct investment enterprises (FDI enterprises) and export processing enterprises having foreign direct invested capital (FDI EPEs) are enterprises that have relatively specific characteristics in terms of legal and business activities as regards Vietnamese regulations. Most of these economic organizations have been established in Vietnam with their main business activities related to trading goods within and outside of Vietnamese territory.

In order to ensure compliance with legal procedure and mitigate tax risks as well as any related potential penalties which might affect their financial health and the enterprise's reputation, such FDI enterprises and FDI EPEs need to pay particular attention to and have a good understanding of the relevant regulations when engaging in selling goods and undertaking other activities directly related to sale of goods in Vietnam.

Right of FDI Enterprises to Export/Import and Distribute

Pursuant to the [current regulations](#) (the Decree Detailing the Commercial Law and the Law on Foreign Trade Management on the purchase and sale of goods and activities directly related to the purchase and sale of goods by investors, foreign investors and foreign-invested economic organizations in Vietnam, No. 09/2018/N[[Dstrok]]-CP), the right of an FDI enterprise to export, import, and distribute are defined as follows:

- Right to export means the right to buy goods in Vietnam for export, including the right to be named on

Tran Nguyen Mong Van is a Tax Director of Grant Thornton Vietnam.

the export declaration to carry out and take responsibility for export-related procedures. Export regulations do not include the right to purchase goods from entities other than traders for export, unless otherwise provided by Vietnamese law or an international treaty to which Vietnam is a contracting party.

- Right to import means the right to import goods from abroad into Vietnam for sale to traders who have the right to distribute such goods in Vietnam, including the right to be named on the declaration of imported goods for execution and responsible for the procedures related to import. The right to import does not include the right to organize or participate in a goods distribution system in Vietnam, unless otherwise provided by Vietnamese law or an international treaty to which Vietnam is a signatory.

- Distribution means wholesale, retail and franchising activities, and sale of goods by agents.

- The right to distribute means the right to directly perform distribution activities.

Regarding conditions, those FDI enterprises having (i) export rights, are allowed to export goods purchased in Vietnam, goods processed in Vietnam and goods legitimately imported in Vietnam to a foreign country or a separate non-tariff zone, or (ii) import rights, are allowed to import goods from a foreign country or separate customs zone into Vietnam, provided that:

- they are goods which are not included in the list of goods banned from export and import, the list of goods temporarily excluded from export and import, and the list of goods not eligible for export and import as specified in international treaties to which Vietnam is a signatory;

- if the goods are included in the list of goods for export and import under license, or under certain conditions, the FDI enterprise has the relevant license or meets the conditions according to the regulations, apart from registering as prescribed in the [Law on Investment](#)

and the [Law on Enterprises](#).

According to the regulations in the [Schedule of Specific Commitments](#) in Trade in Services for Vietnam of the World Trade Organization, the limitations to market access with regard to FDI enterprises on business lines described as “wholesale trade, retailing” have expired. Hence, FDI enterprises are allowed to conduct such business lines without restriction.

Right of FDI EPEs to Export/Import and Distribute

Regarding the definition, the EPE is an enterprise specializing in the production of goods which will then be exported, providing services related to the production of goods being exported, and export-related activities, which has been established and operated under the government’s regulations on EPEs. The trading of goods between EPEs and other enterprises in the Vietnamese market is considered an import-export relationship and must comply with the provisions of the Law on Export and Import.

For production activities for export, it is notable that FDI EPEs which sell goods produced by themselves are not subject to the [regulations](#) that apply to FDI enterprises. Accordingly, FDI EPEs are not required to carry out the procedures for applying for a business license or a license to set up a retail establishment, apart from registering as prescribed in the [Law on Investment](#) and the [Law on Enterprises](#). In addition, FDI EPEs are not subject to value-added tax (VAT) for production activities for export in respect of goods produced by themselves, so they are not required to declare VAT with the tax authorities in this regard.

For all other production activities (i.e. the right to export goods not produced by themselves, the right to import and the right to distribute), FDI EPEs must comply with the regulations that apply to FDI enterprises and with the following VAT obligations:

- The FDI EPE must register for VAT declaration with the domestic tax authority and separately record

revenue and the correlated expenses arising from the sale of goods into Vietnamese territory. The FDI EPE also has to arrange a separate area to store imported and exported goods according to the right to export, right to import and the right to distribute.

- The sale under these activities is subject to VAT invoice issuance and VAT declaration to apply deduction or refund upon meeting the conditions of the relevant regulations.

Planning Points

In light of the above, FDI enterprises should assess an application for a business registration license for business lines of the right to export, right to import, and the right to distribute, apart from registering as prescribed in the Law on Investment and the Law on Enterprises, to fully comply and minimize any risks related to legislation, tax and tariffs.

Where FDI EPEs have incurred VAT liabilities under the business lines of the right to export, right to import and the right to distribute, they may be entitled to claim a VAT refund. They should ensure they meet the conditions of the relevant regulations to claim such tax benefits.

Companies should regularly update themselves on any new regulations or any adjustments required for their full implementation, or contact professional advisers where necessary for assistance.

This article does not necessarily reflect the opinion of The Bureau of National Affairs, Inc., the publisher of Bloomberg Law and Bloomberg Tax, or its owners.

Author Information Tran Nguyen Mong Van is a Tax Director of Grant Thornton Vietnam.

The author may be contacted at: mongvan.tran@vn.gt.com