



PwC Vietnam NewsBrief

Viewpoint of Ministry of Industry and Trade on definition of foreign trader without presence in Vietnam



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30
years
in Vietnam

At a glance..

This is an update following our last NewBrief on this topic (please refer to our previous NewsBrief dated 16 July 2024), where we highlighted the requirement that the foreign party in an ICEI must not have a presence in Vietnam in order for an ICEI transaction to be effected.



In-country export & import transactions in Vietnam: viewpoint of Ministry of Industry and Trade on definition of foreign trader without presence in Vietnam

Currently we see General Department of Customs instructing enterprises to determine whether this condition is fulfilled by reference to the Law on Foreign Trade Management No. 05/2017/QH14 and Decree No. 90/2007/ND-CP, which state: *“Foreign trader without presence in Vietnam” means a foreign trader who does not engage in investment and business activities in Vietnam in forms prescribed in law on investment, commercial or enterprises and does not establish any representative office or branch in Vietnam in accordance with regulations of law on commercial or enterprises”*.

This is particularly concerning as this would preclude ICEI transactions even for foreign companies which simply have a subsidiary company here.

On 10 June, GDC sent a letter to the Ministry of Industry and Trade and the Ministry of Investment and Planning to consult them on this matter.

On 22 July, MoIT issued official letter no.399/XNK-THCS in response where MoIT stated its view that the definition of *“foreign traders without presence in Vietnam”* in Clause 5 Article 3 of the Law on Foreign Trade Management and Decree 90 only applies in relation to determining the export or import rights of such foreign traders, not for any other purpose. Accordingly, MoIT opined that if GDC encounters difficulty in identifying the presence of foreign traders to assess the feasibility of an ICEI, GDC should consider developing its own definition of *“foreign traders without presence in Vietnam”*.

We will monitor any development from GDC in response to MoIT’s letter and keep you posted.

Please contact PwC’s Customs team members below for any assistance required.

Contact us

This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. For further information or if you require our official advice or assistance, please reach out to us.



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