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Tax Alert – Canada

Canada Border Services Agency to increase amounts for Administrative Monetary Penalties effective 1 April 2019

EY Tax Alerts cover significant tax news, developments and changes in legislation that affect Canadian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor or EY Law advisor.

On 5 March 2019, the Canada Border Services Agency (CBSA) released Customs Notice 19-05, announcing that 22 contraventions related to commercial trade under the Administrative Monetary Penalties (AMPs) system will be amended with increases to the penalty levels for commercial importers, particularly for second and third penalty levels.

Background

What are AMPs?

CBSA employs AMPs to issue monetary penalties to commercial importers for violating customs and trade legislation administered by CBSA. Through AMPs, CBSA attempts to deter non-compliance by commercial importers and create a level playing field for Canadian businesses.¹

Rationale of the increase

In the 2017 Audit of Customs Duties, the Auditor General of Canada criticized the AMPs program for levying penalties that, according to the Auditor General, were too low to be effective to encourage importers to comply with import rules.² In addition, the report recommended that CBSA review its penalties to better protect import revenues.³ Following a CBSA review of the AMPs regime between November 2017 and July 2018, and in consultation with various stakeholders, the decision was taken by CBSA to increase penalties for certain contraventions.⁴

¹ <https://www.cbsa-asfc.gc.ca/trade-commerce/amps/menu-eng.html>

² 2017 Spring Reports of the Auditor General of Canada to the Parliament of Canada: Report 2 - Customs Duties, paragraph 2.24.

³ 2017 Spring Reports of the Auditor General of Canada to the Parliament of Canada: Report 2 - Customs Duties, paragraph 2.35.

⁴ Customs Notice 19-05, <https://www.cbsa-asfc.gc.ca/publications/cn-ad/cn19-05-eng.html>



The following contraventions will have their penalty amounts increase at all levels as of 1 April 2019:⁵

Contravention code ⁶	Issues covered under contraventions	Penalty level	Current penalty amount	Penalty amount effective 1 April 2019
C004, C152, C168, C169, C223, C224	<i>Special Import Measures Act</i> , proof of origin, abatement and refunds	1st	\$150	\$500
		2nd	\$225	\$750
		3rd and subsequent	\$450	\$1,500
C080, C081, C082, C083, C350, C351, C352, C353	Trade data corrections, usually relevant after a trade verification final report is issued by CBSA to the importer	1st	\$150 to a maximum of \$5,000 (per issue) or \$25,000 (per occurrence)	\$500 to a maximum of \$5,000 (per issue) or \$25,000 (per occurrence)
		2nd	\$225 to a maximum of \$200,000 (per occurrence)	\$750 to a maximum of \$200,000 (per occurrence)
		3rd and subsequent	\$450 to a maximum of \$400,000 (per occurrence)	\$1,500 to a maximum of \$400,000 (per occurrence)
C157, C214, C215, C216, C217, C218, C298	Recordkeeping, duties relief, drawback, remission orders	1st	\$300	\$600
		2nd	\$450	\$1,200
		3rd and subsequent	\$900	\$2,400
C336	Failure to pay amounts owed to CBSA	Flat rate	\$100 per instance	\$200 per instance

According to the Customs Notice, the maximum AMP of \$25,000 will not change for first-level penalties. Per CBSA Memorandum D22-1-1, this maximum penalty amount applies for a single contravention.⁷ Second- and third-level penalties are much higher, at \$200,000 and \$400,000, respectively.

⁵ *ibid.*

⁶ Details regarding each contravention can be reviewed at: <https://www.cbsa-asfc.gc.ca/trade-commerce/amps/mpd-dmi-eng.html>

⁷ Memorandum D22-1-1, Administrative Monetary Penalty System, paragraph 23.

To ease the transition to the new penalty structure, the amended contraventions will have their penalty levels reset to the first level if the contraventions occur on or after 1 April 2019.

Impact for businesses

Penalty amounts will approximately triple across all three penalty levels under the new structure. While the new amounts are, in absolute terms, still not overly onerous, the decision to change the penalty structure is indicative of CBSA's efforts to improve its controls on importer non-compliance. Therefore, importers should be mindful of these changes and take the necessary measures to review their customs processes and ensure they are not inadvertently non-compliant.

Importers should also be aware that it is likely the CBSA will take further measures to reinforce its ability to enforce compliance in the near future. Notably, the 2017 Auditor General's report recommended that CBSA reduce the period allowed for certain retroactive changes to customs declarations for imported goods. Currently, besides for specific adjustment timelines noted in particular Free Trade Agreements,⁸ importers may amend declarations up to four years after the date of accounting of the goods. The Auditor General's report recommends reducing this time period to prevent importers from not paying the required customs duties. Per the report, CBSA will be developing options to reduce the permitted time period for filing retroactive adjustments, and committed to completing these changes by December 2019.⁹

Learn more

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⁸ Example: Under the current North American Free Trade Agreement, an importer has only one year from the date of entry into Canada to request change to tariff treatment that would result in a refund of duties paid. See Memorandum D6-2-3 *Refund of Duties* paragraph 26, <https://www.cbsa-asfc.gc.ca/publications/dm-md/d6/d6-2-3-eng.html>.

⁹ 2017 Spring Reports of the Auditor General of Canada to the Parliament of Canada: Report 2 - Customs Duties, paragraphs 2.36 - 2.42.

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