

Philippine Customs imposes significant penalties for failure to keep import documents

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Executive summary

The Philippine Government recently issued Customs Administrative Order (CAO) No. 01-2019, which covers the conduct of the post clearance audit (PCA) of all records required to be kept by all importers, beneficial or true owners of imported goods, customs brokers and those authorized to bring imported goods to special economic zones and free ports. The CAO prescribes guidance for recordkeeping and imposes adverse consequences for non-compliance. The proper retention of import documents is key during a PCA and often overlooked by importers.

Detailed discussion

Customs recordkeeping requirements

The requirement to keep records of importation is sanctioned by the *Customs Modernization and Tariff Act (CMTA)* which provides that all importers are required to keep at their principal place of business and for a period of three years from the date of final payment of duties and taxes or customs clearance, all records of their importations, books of accounts, business and computer systems and all customs commercial data including payment records.

Customs brokers and parties involved in the process of clearing imported goods are covered by this requirement with respect to the transactions that they handle. Locators, or those authorized to bring imported goods to special economic zones and free ports are also required keep records of importation even if they are enjoying the tax and duty-free incentive on qualified importations.

The rationale for keeping records of importation is primarily to ascertain that the goods declaration filed by the importer is correct and the taxes and duties paid on said importation are accurate.

Additional consideration, however, should be given to the requirement of the Philippine tax authorities [i.e., Bureau of Internal Revenue (BIR)] to retain and preserve books of accounts and other accounting records for a period of 10 years.

Also, if a taxpayer has an on-going tax audit investigation, relevant copies of documents, books of accounts, and other accounting records necessary for the tax authorities to conduct and complete the investigation should likewise be retained and preserved. These requirements should be complied with and aligned with the recordkeeping requirements for customs purposes.

Documents that should be kept by importers

CAO No. 01-2019 provides for the specific documents that must be kept by all importers for PCA purposes. The list is quite exhaustive and effectively covers all records related to the imported goods and the entity's import activities.

In addition to the typical import documents such as product description or specification and shipping documents (goods declarations, commercial invoices, import licenses or permits, bills of lading, shipping instructions, certificates of origin, etc.), the CAO also requires importers to keep documents on the entity organization and structure, documents on orders and purchases, documents on manufacturing, stock and resale records, financial documents, chart and codes of accounts and information or records that are electronically recorded or stored.

Moreover, locators are required to maintain documents proving their entitlement to tax incentives on importation as well as records of all transactions and activities relating to the admission and withdrawal of goods from free zones into the customs territory.

Penalties for failure to keep documents

The CAO highlights the importance of keeping records of importation and provides the following penalties for non-compliance.

- ▶ **20% surcharge** - Importers who fail to keep the prescribed records will be subject to a 20% surcharge on the dutiable value of the goods for which no records were kept and maintained. Thus, even though there are no findings for deficiency duties and taxes, importers may still be required to pay this 20% surcharge if recordkeeping violations are discovered during the conduct of a PCA.
- ▶ **Suspension or cancellation of importers accreditation** - All importers must be accredited with the Bureau of Customs (BoC) to allow them to register in the Client Profile Registration System (CPRS), an internet-enabled application that automates various transactions with the BoC, which includes the filing of import entries. Importers whose accreditation is cancelled or suspended will not be able to import and/or file import entries within the period required by law which may lead to the implied abandonment and forfeiture of their imported goods. Pursuant to CMO No. 23-2018 dated 26 November 2018 applications for accreditation, suspension, revocation, cancellation, and reactivation of importers' accreditation are subject to the approval of the Commissioner of Customs.
- ▶ **Suspension of the delivery and release of subsequent imported goods** - The BoC is likewise authorized to hold the delivery and release of subsequent imported articles to answer for the fine and any revised assessment if an importer is found violating the recordkeeping requirements of the CMTA. For the importer, this will entail costly storage fees, fines and other charges as well as lost business opportunities and business disruption due to the delay in the release of their imported goods.
- ▶ **Waiver of the right to contest the results of the audit** - To further emphasize the importance of recordkeeping, the CAO provides that the failure to keep documents constitutes a waiver of the right to contest the results of the audit based on records kept by the BOC. Accordingly, even though the assessed duties and taxes on a particular importation is patently erroneous, the importer loses the right to dispute the same if it could not produce the records

pertaining to the import transaction being assessed. Consequently, the importer may be required to pay the basic duties and taxes as assessed plus the administrative penalties which range from 125% to 600% of the revenue loss and 20% legal interest per annum on top of the 20% surcharge for failure to keep records.

- ▶ **Criminal prosecution and fine** - Finally, importers should keep in mind that the law provides for criminal prosecution for violating the customs recordkeeping requirements which is punished with imprisonment of not less than three years and one day but not more than six years, and/or a fine of P1 million.

Implications

In view of the recent issuance of CAO No. 1-2019 on the conduct of the PCA, the BoC is expected to intensify the audit of all importers including locators. Ensuring compliance with the recordkeeping requirements can make a significant difference to the outcome of a PCA.

The importance of keeping and maintaining complete records of importation cannot be overstated because the consequences of non-compliance have an adverse impact on business. Therefore importers should constantly check and ensure that their records of importation are complete and compliant with the prescribed rules, not only to avoid unnecessary penalties, but also to ensure the uninterrupted right to import goods into the Philippines.

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