

Intangible assets should be declared to customs upon importation to comply with customs regulations.

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Recently, many companies in Taiwan have received questionnaires from the Customs Administration for self-assessment and customs review purposes. Some companies have faced post-importation audit and investigations and have been required to pay additional import taxes for failing to declare royalties. This has resulted in compliance risks and financial implications for the companies.

According to Article 29 of Taiwan Customs Act, if a purchase or sales contract includes expenses related to royalties, distribution rights, service fees, or other forms of intangible asset costs, the importer should declare the royalties to customs as part of the dutiable value of the goods. The Ministry of Finance, Customs Administration, states that in accordance with Article 12 of Enforcement Rules of the Customs Act and the principle of the WTO Agreement on Customs Valuation, royalties included in the dutiable value of imported goods are those paid in relation to the imported goods and are conditions of the sales for importation. Therefore, regardless of the specific terminology used in the contract, such as royalties, distribution rights, service fees, or other names for intangible asset costs, it is necessary to determine whether these expenses should be included in the dutiable value of import goods as one of the elements for paying customs duty/value-added tax.

The Ministry of Finance, Customs Administration further explains that the dutiability of royalty payment depends on the actual situation of specific case due to the diversified circumstances of international trade transactions. It can generally be determined by the licensing agreement or sales contract. However, there are also cases where royalties are paid to third parties unrelated to the seller without written agreement. Importers need to understand the terms of the transaction and declare them correctly to avoid becoming the object of post-importation audit and investigations due to royalties.

Our take

The dutiability of royalties requires careful assessment on various factors, such as the contract terms, sales conditions, and the nature of the transaction. This is to avoid violating customs laws and facing over-paid import taxes or penalties. Companies need to ensure compliance with regulatory requirements to avoid post-importation audit or investigations by customs and duty made up. Failure to comply the regulations can result in compliance risks and financial implications for the company. If importers made errors in their customs declarations and were involved in violations of Customs Anti-smuggling Act, as long as they proactively apply for correction and payment of any overlooked taxes before receiving reports or investigations by customs, tax collection authorities, or other assisting enforcement agencies, they may be exempt from additional penalties under Article 45-3 of the Customs Anti-smuggling Act.

Importers are reminded to carefully assess whether royalties should be included in the dutiable value of imported goods, based on the valuation principles of Customs Act and the essence of the law. It is important to make honest declarations based on actual situation. Importers should be mindful of these considerations.

Let's talk

If you would like further advice in relation to the topic above or a deeper discussion of how this issue might affect your business, please contact:

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