

Philippines Updates: Post Clearance Audit and Prior Disclosure Program

The Department of Finance (DOF) Secretary has approved Customs Administrative Order (CAO) No. 01-2019, signed on 9 January 2019, implementing the post clearance audit functions of the Bureau of Customs (BOC), prior disclosure program and other relevant provisions of the Republic Act (RA) No. 10863 or the Customs Modernization and Tariff Act (CMTA).

Post Clearance Audit

The Post Clearance Audit group (PCAG) is mandated to conduct audit of importers, beneficial or true owners of imported goods, customs brokers, agents, and locators, as well as all other parties engaged in the customs clearance and processing functions. Audits will be conducted by two operating units, namely the Trade Information and Risk Analysis Office (PCAG-TIRAO) and Compliance Assessment Office (PCAG-CAO).

The key features of CAO No. 01-2019 on Post Clearance Audit (PCA) are outlined below.

- The selection criteria for any company to undergo PCA include:
 - relative magnitude of customs revenue to be generated from the company;
 - rates of duties of the company's imports;
 - compliance track records of the company;
 - assessment of the risk to revenue of the company's import activities;
 - compliance level of a trade sector; and
 - non-renewal of an importer's customs accreditation.
- Records that are required to be maintained and produced for PCA purposes should include documentation on:
 - entity organisation and structure (e.g. articles of incorporation);
 - orders and purchases (sales and other related agreements);
 - shipping, importation, exportation, and transport (e.g. goods declarations);
 - manufacturing, stock, and resale (e.g. inward goods register);
 - financial documents (e.g. cash receipts);
 - chart and codes of accounts, general and subsidiary ledgers, general journal, accounting instruction manuals, and systems and program documentation that describes the accounting used by the importer; and
 - electronic copies of the above-mentioned, as applicable.
- Entities required to maintain records of importations are:
 - Importers, which includes consignees, importer of record, owner of goods or a party who:
 - imports goods or withdraws goods from free zones into customs territory, claim refund or drawback, or transport or stores goods under security;
 - in some cases, person/companies ordering imported goods from a local importer/suppliers;
 - persons whose activities require the filing of goods declaration.
 - Customs brokers and other parties engaged in the customs clearance.
 - Locators or companies operating inside special economic zones and free ports.
 - Agent of the importer.
- All records are required to be kept at the principal place for business for a period of three years from the date of final payment of duties and taxes or customs clearance, whichever is later, as the case may be. Importers and other entities covered need to give full and free access to the premises where reports are kept, including access to a cloud based data room, private server, or other devices;

- The guidelines in conducting a PCA are as follows:
 - Risk profiling analysis of importers, including data gathering and evaluation of their import and export operations;
 - Issuance and delivery of an Audit Notification Letter (ANL) by the BOC Commissioner to the identified company either through personal service at their principal place of business, registered mail or through their official electronic mail address. An ANL is valid for 30 days from its issuance and can be revalidated by the assistant commissioner for another 30 days;
 - Preparation of audit plan by the audit team;
 - Commencement and conduct of audit not later than 60 calendar days and its completion in 120 calendar days, in both cases to be counted from the date issuance of the ANL;
 - Sending of demand letter for payment of deficiency by PCAG to the identified company either through personal service at their principal place of business, registered mail or through their official electronic mail address with a demand to pay not later than 15 days from receipt;
 - Filing a request for reconsideration or reinvestigation by the adversely affected importer to the BOC Commissioner within 15 days from the receipt of demand letter and providing supporting documents within 30 days from the filing date of the above request. The BOC, through PCAG, needs to resolve the request in 60 days from submission of complete documents. In case of an adverse ruling or decision of the BOC Commissioner, the importer may appeal to the Court of Tax (CTA) within 30 days from its receipt of the ruling or decision;
 - Issuance of acknowledgment letter with a statement that the audit is completed by the BOC upon its receipt of payment made by the importer of the amount demanded; and
 - Furnishing of a copy of the final audit results with the amount paid by the importer in 30 days by the BOC to the DOF and BIR. The BOC will likewise provide the DOF a quarterly status report of all ANLs' issued and audits conducted.

The table below contains the list of offenses along with imposable penalties.

Penalties	Offenses		
	Failure to keep records	Failure or refusal to give full and free access to records, contumacy, or contempt	Failure to pay correct duties and taxes on imported goods
Suspension or cancellation of importer or customs broker accreditation with the BOC	X	X	
Surcharge of 20% on the dutiable value of the imported goods	X	X	
Hold delivery or release of subsequent importations	X	X	
Criminal prosecution with imprisonment of 3-6 years, and/or fine of PHP1m	X	X	
Waiver of the right to contest the audit results	X		
Punishment from the proper court having criminal jurisdiction over the matter		X	
Re-assessment of the importations subject of audit		X	
Fine of 125% - 600% of the revenue loss and, as applicable, imprisonment of 2-8 years.			X
20% interest per annum on deficiency duties, taxes, and other charges, fines and penalty	X	X	X

Prior Disclosure Program

Under CAO No. 01-2019, the Prior Disclosure Program (PDP) is based on international customs best practice, and authorizes the BOC Commissioner to accept and consider prior disclosure by importers of errors and omissions in goods declarations resulting in deficiency in duties and taxes on past importations as a potential mitigating factor in determining penalties. This also includes disclosures relating to royalties and other proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly to the seller.

The key features of CAO No. 01-2019 on PDP are outlined below.

- Any importer may submit a disclosure under the PDP with or without receiving an ANL. In both cases, the requirements include submission of a PDP application form indicating the errors in goods declaration and payment of deficient amount of duties, taxes and penalties, if applicable. Failure to do so will result to its non-acceptance or disapproval of application;
- Where an ANL is received, the importer has 90 calendar days from its receipt to comply with the above mentioned requirements;

- When there are additional errors or new issues discovered that need to be disclosed, the importer may amend the PDP application and pay the additional deficient amount of duties, taxes and penalties within an additional non-extendible period of 30 calendar days from the filing date of the original application;
- A PDP will not be applicable for any goods declarations that are subject of pending cases with any other customs office; covered by cases already filed and pending in courts; and fraudulent.
- An approved PDP application will result in the following:
 - In case of non-receipt of an ANL, a PDP applicant pays the deficient amount due plus the legal interest of 20% per annum;
 - When an ANL is received, a PDP applicant pays the deficient amount due plus penalty of 10% of the base deficiency and legal interest of 20% per annum; or
 - For PDP applications filed within 30 days from the date of payment or accrual of royalties and other proceeds of any subsequent resale, disposal, or use of importations accruing directly or indirectly to the seller, or any subsequent adjustment to the price paid or payable, a PDP applicant who made the above disclosures will only pay the deficient amount due without any penalty or interest.
 - Otherwise, the payment of interest or both interest and penalty will be demanded and the PCAG will recommend to the BOC Commissioner the conduct of a formal and full audit in the event of findings of fraud or other material inaccuracies, mistakes or errors in the goods declarations or other violations committed that are not revealed in the PDP application.

OUR VIEWS:

CAO 1-2019 provides certainty on the audit approach, coverage and their parameters in selecting an audit participants, as well as, the policy on prior disclosure program.

The new regulation extended the coverage of audit examination not only to importers but also to parties involved in the import transaction like customs brokers and beneficiary of imported goods. It has provision that specifically includes locators or companies operating inside special zones and free ports as one of the parties required to keep records for customs verification. This provision addresses previous misconceptions that locators were immune from post clearance audit.

Companies must ensure that import records are kept within three years from importation and accessible to Customs, whenever needed. It is equally important to observe each record of importation is supported by an accounting records for value declarations, including complete product licenses and company registrations.

It is ideal to conduct a regular compliance reviews to evaluate customs operations and practices, and to validate if each import transactions follows customs rules and regulations. If a company discovers a potential risk area or receives an ANL, they may consider option to prior disclosure.

The prior disclosure program provides a window to disclose and pay erroneous or inaccurate import taxes, including discrepancies resulting from post-importation price adjustments (e.g. royalties, proceeds, and others). However, unlike the former disclosure program that allows payment of deficient taxes without penalties, companies wanting to avail of PDP must be cautious of the proper timing to lessen the exposure to penalty and interest.

For companies that outsource customs-related activities to logistics providers, they are suggested to take an active involvement of knowing each processes and conduct regular checks to be in control of its compliance. To do this, companies must have the competence and relevant knowledge for ensuring compliance.

Let's talk

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

Paul Sumner
 Partner
 Office: +66 2 344 1305
 Email: paul.sumner@pwc.com

Luningning M Pizarra
 Manager
 Office: +63 (2) 459 2005
 Email: luningning.m.pizarra@ph.pwc.com



The information contained in this article is of a general nature only. It is not meant to be comprehensive and does not constitute the rendering of legal, tax or other professional advice or service by PricewaterhouseCoopers WMS Pte Ltd ("PwC"). PwC has no obligation to update the information as law and practices change. The application and impact of laws can vary widely based on the specific facts involved. Before taking any action, please ensure that you obtain advice specific to your circumstances from your usual PwC client service team or your other advisers.

© 2019 PricewaterhouseCoopers WMS Pte Ltd. All rights reserved. In this document, "PwC" refers to PricewaterhouseCoopers WMS Pte Ltd which is a member firm of PricewaterhouseCoopers International Limited, each member firm of which is a separate legal entity.