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ZOOM IN TRADE

SHINHAN Customs Service Inc.

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Grace Chang

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"Be kind, for everyone you meet is fighting a hard battle."*

On a recent train ride down to Busan, a teenage girl caught my eye as she had hair rollers shaping her bangs. Perhaps it is a recent trend as it is quite common to see young women, especially high school students, in public with hair rollers in clear sight. When the trend first started, I was quick to judge, trying to comprehend how this younger generation could be so comfortable leaving home only half prepared for the day ahead.

The Cover Story for this month is 'The Impact and Significance of the Revision of the Customs Act in 2021'. FTA News covers 'Changes in the system related to the application for issuance of a certificate of origin in accordance to the revision of regulations for issuing the certificate of origin for exports', and Inside Vietnam reports 'The AEO system of Vietnam and the EU's suspension of the full transition to the GSP REX'. In addition, the Updates in Customs and Trade Related Laws is 'The establishment of the 'Notice on the Administrative Processing of Support for Inspection Cost of Export and Import Cargo', and the Customs Case Study is 'whether items temporarily used for participation in international conventions are subject to re-import tax exemption pursuant to Article 99 of the Customs Act'.

In March 2017, Korea faced a monumental turning point in its history as the President went through a highly public trial and was ultimately impeached. In the heat of the impeachment trial, television cameras caught a judge entering the Constitutional Court with a hair roller protruding from the back of her head. There was a moment of empathy as we felt the gravity of the historical event, and how this judge must have been under such tremendous stress and pressure that she hadn't even noticed her hair roller exposed for the world to see.

On that day, the President of South Korea was impeached.

[How has the world progressed in the three years since that fateful day?](#)

We hoped that we would be brought closer together by a more open society combined with new technologies enabling greater information sharing. But the gaps between classes and between political factions have only widened. Instead of bringing us together, algorithms have created echo chambers creating more extreme views and stubborn beliefs.

[It is only natural for our lives to revolve around ourselves.](#) Individual beliefs, opinions, and ideologies are natural. But does that make it okay for the judge with a hair roller protruding from the back of her head to scold the teenager for being senseless? Or does that make it okay for the teenager to shut out the judge for being old and disconnected from society?

[We are all living life in the pursuit of happiness and fulfillment.](#) Everyone faces unique challenges in life, particularly in these turbulent times. And that is why we need empathy. Empathy for each other's challenges and for each other's aspirations.

At the end of the day, empathy will not solve our differences. We will continue to diverge in thoughts and beliefs. But perhaps with empathy we can alleviate the anger. [And perhaps with empathy, those walking away from each other will one day meet in the middle – the world is round after all!](#)

*Plato(428-348 BCE), Wikipedia





Cover Story

Impact and significance of the Revision of the Customs Act in 2021

Amendments to the Customs Act

2020 is adapting to unexpected changes due to COVID-19, and summer is rapidly passing by a long rainy season. On July 22, the government announced amendments to the tax law, and its proposal is expected to be applied from 2021, after the completion of a 20-day legislative notice, a cabinet meeting, submission to the regular National Assembly and its deliberation and resolution. Among the customs sector, we are looking for important amendments that the declarer, such as import and export companies as well as customs brokers, should pay attention to, and predict changes accordingly to help prepare in advance so that continuous fidelity reports can be made.



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- Import/Export Clearance
- Provisional/Final Price Declaration
- Item Requirements
- HS Code Classification

1. Establishment of additional tax for non-reporting and under-reporting of the tax base (Custom Act Article 42, Article 42 Clause 2)

Currently, additional taxes (10% of insufficient tax, 0.025% per day, etc.) are imposed on violations of the good faith duty for reporting and payment. However, in the amendment, even concerning goods that tariffs are exempted or not taxable (For goods tax rate or conventional tariff rate is 0% or for items that are subject to reduction or exemption under the Customs Act), additional tax is expected to be imposed for non-reporting, underreporting, and fraudulent acts.

(Prediction) The taxpayer (importer) and the filing person should declare the correct taxable value, as it does not mean that goods that are not taxable are not subject to additional tax because there is no customs duty to be paid, but rather has the effect of evading import VAT and further corporate tax.

| Category | Subject for additional tax | Tax rate | | |
|---------------------|--|-----------------|----------------|----------------|
| | | Under reporting | None-reporting | Fraudulent Act |
| Tax Base (Price) | Omission of Tax Base | 0.8% | 1.6% | 3.2% |
| Tax Base (Quantity) | Omission of Tax Base X Protective Duty Base Tax Rate | 10% | 20% | 40% |

Applicable Period: Applicable to those who file an import declaration after Jan.1, 2021

However, since penalty tax is a subordinate tax to the main tax, an intense debate is expected in the process of National Assembly deliberation on whether it is possible to impose additional tax if there is no customs duty. The Supreme Court precedents also holds the same position. (Refer to Supreme Court precedent 2015 head 56120)

2. In the case of transactions among affiliated persons, the obligation to submit data on determining the customs duty value and fine for non-compliance levy

- 1) Reinforcement of the compliance of taxpayers (importers) to verify the transaction price (Article 30, 4, 5, 37 of the Customs Act-4 Paragraph 6-7)

Currently, when conducting transactions between affiliated persons (multinational corporations), it is difficult to submit data on determining the taxable price of imported goods with the consent of the head office. The disapproval or exclusion of the transaction price was made when the taxation authority proved that the transaction price was affected by the affiliation. In the amendment, the taxpayer (importer) must prove the affiliation has any or no affect on the transaction price.

(Prediction) With this amendment, the tax authorities and importers debate over the subject of verification [International regulations (WTO Customs Valuation Agreement Preliminary Statement 14.1- Importer's burden of proof) and Supreme Court precedent (2007 Judgment 9303-taxation authority's burden of proof)] However, importers who need to obtain cooperation from the head office are expected to be burdened with clarifying that transaction prices have not been affected.

In a situation where it is difficult to know what data a company has, the transaction price should not be disapproved because it is non-existent data. A lot of controversy is expected after legislation.

| Current | Amendment |
|--|---|
| <ul style="list-style-type: none"> □ Request of submission of tax data and the transaction price excludes <ul style="list-style-type: none"> ○ When the recognition of a transaction price is difficult with following reasons: Require the taxpayer to submit the proof <ul style="list-style-type: none"> - Significant price differences from the same kind/same quality or similar product prices ○ Transaction price is excluded for the following cases: (taxed based on the same kind/same quality products) <ul style="list-style-type: none"> - Tax data not submitted or not in accordance with accounting principles - Still a reasonable doubt exists on the accuracy or truthfulness of the price. | <ul style="list-style-type: none"> □ Increased demand to submit the data when trading between affiliated parties <ul style="list-style-type: none"> ○ 'Reason for difficulty in acknowledging transaction price' Expanded request for proof <ul style="list-style-type: none"> - price difference in percentage with same kind/same quality or similar goods is more than prescribed by Presidential Decree - When Seller's cost and the profit were not fully reflected in the trading price(New) - When the trading price does not comply with the normal pricing practices in their industry(New) ○ Expand the price exclusion when trading with affiliated parties. <ul style="list-style-type: none"> - Same as left - Same as left - When the affiliated person fails to submit the proof of the appropriateness of the transaction price(New) (consistent with the industry's normal price calculation method) |
| <p>Application period: Applies from the request for submission of tax data after Jan.1, 2021</p> | |

2) Strengthen sanctions for not submitting tax data on transactions between affiliated persons. (Customs Act No. 277-1)

Currently, failure to submit the taxable data or submitting the false data on transactions between affiliated parties is subject to a fine of no more than 100 million won. However with the amendment, non-compliance of the correction request or submitting the unclear material or non-compliance of the request for correction within 30 days can result in the imposition of additional fine up to 200 million won depending on the delayed period. The total penalty can mount to 300 million won. In addition, due to the imposition of a fine, it may not be possible to deduct the VAT purchase tax for the reason of the restriction on issuance of the modified income tax invoice. (Additional explanations are in 3.)

| Current | Amendment |
|---|---|
| <p>When the affiliated was requested to submit the requested documents and failed to do so or submitted the false documents by the deadline without justifiable reasons:</p> <ul style="list-style-type: none"> - Less than 100 million won fine will be imposed | <p>When the affiliated was requested to submit the requested documents and failed to do so or submitted the false documents by the deadline without justifiable reasons:</p> <ul style="list-style-type: none"> - Less than 100 million won fine will be imposed. - When the correction request to submit documents was not fulfilled within 30 days, up to 200 million won will be added to the imposition depending on the delay period. <p>(New)</p> <p>*100 million won + 200 million won (total of maximum 300 million won)</p> |
| <p>Applied period: Applied from the first penalty imposed after Jan. 1, 2021</p> | |

3. Expansion of the issuance of modified income tax invoices after the tax amount is corrected (Value Added Tax Act VAT Act 35-2)

Currently, if the importer knows in advance what the head of the customs office will decide or correct and makes a revised report, it is possible to issue a modified import tax invoice only when specified (positive method). Except for cases that the fine is imposed or the penalty is applied, the revised VAT bill specifies to allow issuance of modified import tax invoices (negative method), and the reasons for issuance will be expanded.

(Predicted) To protect the taxpayer's rights and interests, the industry's demands for the protection of rights and interests was accepted. A big change lies ahead by accepting it. However, as mentioned above, when the multinational corporations have not submitted documents related to transactions with affiliated persons and a fine for negligence is imposed, it becomes difficult to issue the modified income tax invoice. It is noteworthy that as this became difficult, the taxpayer's obligation to prove the transaction price has been strengthened.

| Current | Amendment |
|---|---|
| Tariff classification change at tariff classification Committee When the original taxpayer and the actual taxpayer are different due to succession of the obligation to pay because of merger, <u>the modified import tax invoices can be issued only if the importer proves that there is no cause attributable to the importer, or if it is confirmed as an error or minor negligence.</u> | Modified income tax invoices can be issued unless penalties are applied in accordance with the Customs Act, or the tax base or amount of customs duties is underreported in an unfair way, and fines are imposed. |
| Applicable period: After Jan.1, 2021, from the person who makes the revised report or corrects | |

4. Other

- 1) Change of validity period for pre-examination of tariff classification (3 years → valid until change)
- 2) Extension of the deadline for submitting a letter of recommendation to apply quotas, etc.
(Before accepting the import declaration → Within 15 days from the date of receipt of the import declaration before carrying out the bonded area)
- 3) When unloading waste, revisions to the Customs Act to ensure public safety including the restrictions when unloading from the means of transportation of goods that may cause harm to public health and safety
- 4) Upgrading to the Customs Act Enforcement Decree and Enforcement Rule to ensure the legal stability of the customs evaluation system (Notice → Enforcement Decree and Enforcement Rule)

For other revised contents and purpose, visit the Ministry of Strategy and Finance website-Legislative notice (<http://www.moef.go.kr/>) and refer to it. (Source: 20 years tax law amendment bill (refer to the Ministry of Strategy and Finance website))



FTA News

Changes in the system related to the application for the issuance of a certificate of origin in accordance with the amended rules for issuing a certificate of origin of exported goods

Revision of the regulations for issuing the certificate of origin of exported goods

The rules for issuing the certificate of origin of exported goods (Notification 2020-70 of the Ministry of Industry), which stipulate the issuance of certificates of origin for general (non-preferential) and customs concessions (APTA, etc.), have been amended and are in effect from July 1st. The main contents of the system to be changed due to the revision of this notice are as follows.



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- Customs Inspection/Item Requirement
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- Duty Drawback

Main contents of the revision

1) applicant's qualifications

The regulations before the change stipulated that no special restrictions be placed on the application qualifications, but after the revision, the applicant qualifications were specifically stated. Applicant qualifications are: ①Export shipper on the certificate of export declaration, ②Those who have been legitimately authorized by the export shipper. (However, it is necessary to submit proof documents approved by the head of the issuing agency and obtain approval), ③a manufacturer of export goods. In this case, it is important to note that a person entrusted by an export shipper must go through a legitimate application process, and the APTA agreement requires that the exporter must apply for a certificate of origin on a commercial invoice.

2) the issuance time limit

The time limit for issuance of the certificate is limited to a maximum of one year from the date of shipment. However, the APTA Certificate of Origin should be issued within 3 business days from the date of shipment according to the agreement. It is important to note that you cannot apply for a general (non-preferential) certificate of origin after one year from the date of shipment, and if the date of issuance is retroactive, the retroactive issuance date must be within one year from the date of shipment.

3) Methods to issue a certificate of origin

Previously, the issuance method was divided into a written issuance method and an electronic issuance method. The internet site communication network method was defined as the electronic issuance method, and EDI method and XML method were indicated. As the issuing method through EDI is expected to end through the revision, the existing EDI method users need to switch to the XML method or the Internet method. (Change to XML method, Internet method, or written issuance method)

4) The origin criteria

Through the revision, the order of application of the country of origin criteria which were applied to the certificate of origin of a non-preferred country was specified. For different origin criteria by each country, ①The origin criteria of the importing country of the relevant goods will be applied first. ② If the importing country does not specifically set the criteria of origin, the criteria for determining the origin of the imported goods under the Foreign Trade Act for the relevant goods (e.g., Foreign Trade Act Enforcement Decree Article 61 (Criteria for determining the country of origin of imported and exported goods) can be applied.

5) Customs Concession Certificate of Origin and the proof of origin

In the past, when applying for a certificate of origin for customs concessions such as APTA, there was no clearly defined proof form, so there were cases in which business was carried out by using the FTA certificate of origin. However, through revisions, the name of the document of the 'Fact Report by Criteria', which is the document to be submitted when applying for the issuance of the certificate of origin for customs concessions, was changed to the 'Declaration of Origin Determination Criteria', and the 'Country of Origin (comprehensive) confirmation document' which was used when issuing the FTA certificate of origin was introduced.

Accordingly, when applying for a certificate of origin for customs concessions, a Declaration of Origin Determination Criteria must be submitted as a required document. In addition, if the producer and exporter are different, confirmation of the certificate of origin (comprehensive) must be attached in the same way as when applying for the FTA certificate of origin.

6) GSP (general preferential tariff) donor countries

Canada was removed from the donor country of general preferential tariffs, and now it includes Russia, Belarus, Kazakhstan, and Australia.

Notes on revision

Among the revisions, the issuance time limit will vary depending on the time of application. The changes to the proof of the certificate of origin of customs concessions such as APTA may take a considerable amount of time to obtain the proof. It is necessary to understand the contents of revisions. The officials that are in charge of issuing the country of origin should be familiar with the changed contents and prepare for the change in accordance with the new document form to ensure that there is no disruption in the issuance of the certificate of origin.



Inside Vietnam

Vietnam's AEO system & The EU's postponement of full conversion to GSP REX

Vietnam's AEO system

AEO (Authorized Economic Operator) is a system that provides benefits to customs administration, such as prompt customs clearance for sincere traders recognized by customs authorities. If you are certified by the AEO, you can strengthen your company's competitiveness by gaining various benefits in customs clearance procedures and fund management.

- (Enhancement of Competitiveness) Advantageous for maintaining/securing customers through the recognition as an excellent company in compliance with laws and regulations, safety management capabilities, etc.
- (Cost reduction) Logistics cost reduction by improvement of internal management capabilities, such as timely transportation of goods, prevention of loss and theft, reduction of inventory cargo, etc.
- (Customs Benefit) Quick customs clearance benefits such as skipping inspection



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Upon completion of the AEO Mutual Recognition Agreement (MRA) between countries, the importing country can enjoy benefits such as reduced import inspection rate, priority inspection for customs clearance, priority measures in case of emergency, etc. with the AEO-authorized status of the exporting country. Korea and Vietnam are currently negotiating to sign an AEO MRA, and when it enters into force, the company will be able to enjoy the benefits of reducing logistics costs.

Vietnam's official name for the Vietnam AEO system is 'Customs Preferential System', and companies certified as AEO by the Vietnam Customs Service are called 'Preferential Companies (Vietnamese abbreviation DNUT: doanh nghiệp ưu tiên)'. Please check the benefits and acquisition requirements when accrediting AEO in Vietnam, and refer to import and export business in Vietnam.

I. AEO target

1. Import and export enterprise
2. Customs (forwarding companies)
3. Organizations or individuals that import goods to implement major investment projects licensed by the Prime Minister prior to the capital formation stage

II. AEO benefits

If you are recognized as an AEO, you can receive benefits for customs clearance procedures, professional inspections, customs reimbursement procedures and post-customs inspections as follows.

1. Preferential treatment for customs inspection

Exemption from document inspection and on-site article inspection in custom Procedures

However, inspections that are conducted when signs of violation of the law are detected and special inspection to evaluate the compliance of the law are not exempted.

2. Priority in customs procedures

Priority of inspection is given to the enterprise with AEO certification when performing scanner inspection for conformity assessment of customs declaration

If there is a problem in the customs clearance process, you can get a written response from customs within 8 hours from the time the problem occurred

3. Preferential treatment when examining import requirements

In the case of an import requirement review in accordance with relevant laws and regulations, AEO certified companies can transport and store imported goods to their warehouse before the results of the requirements review are released.

Priority is given when samples need to be taken for review of requirements.

4. Benefits of pre-refund and post-examination

In the case of a customs refund, the customs office determines whether to refund the tax based on the result calculated by the company and the application form, and the refund of the tax will be determined within one working day from the date of application for refund.

5. Benefits of indirect import

In the cases of indirect import (delivery to another corporation in Vietnam designated by an overseas importer) or importing into Vietnam from a bonded warehouse, declaring after the import is possible.

6. Customs screening after customs clearance

Except for cases of violation of the law, exemption from customs screening after customs clearance done at the workplace. After customs clearance, customs screening is conducted no more than once for 3 years from the date of acquisition of AEO certification. The Customs Commissioner will decide to perform the screening depending on the risk management evidence.

7. Deferred payment of customs duties

AEO accredited companies are obligated to pay customs duties by the 10th of the following month for customs declarations permitted for customs clearance and export.

8. Postponement of C/O submission

If it is possible to submit C/O at the import customs clearance stage, submit C/O by the 10th of the following month from the date of import customs clearance or export

III. Requirements

To be recognized as an AEO, you must meet all of the following requirements.

1. Compliance with customs and tax laws

- 1) Within the last 2 years from the date of application for AEO, there must be no history of disposition due to the following misconduct
 - Tax evasion, tax fraud, smuggling and illegal transport across borders
 - Administrative violation related to customs, and the level of punishment is beyond the jurisdiction of the director of customs bureau or equivalent level
- 2) In the case of a customs company (forwarder), the proportion of reports that received administrative dispositions for violation of customs and tax laws under the jurisdiction of the director of the customs office and the equivalent of the customs office must not exceed 0.5% of the customs declaration documents in the company's name.
- 3) There should be no overdue taxes.

2. Import and export sales requirements

The average sales amount for the last two years from the date of submission of the written application must meet one of the following conditions (excluding entrusted import and export sales)

- 1) Annual import and export sales over 100 million USD
- 2) Over 40 million USD in annual export sales of goods manufactured in Vietnam
- 3) Annual export sales of over 30 million USD of agricultural and marine products grown and produced in Vietnam
- 4) In the case of a customs company (forwarder), the number of customs declarations in the company's name is 20,000 or more per year

3. Electronic customs procedures and electronic tax procedures

You must be using an electronic customs clearance and electronic tax payment system and have an import and export management software program that meets the requirements of customs authorities.

4. Payment for import and export goods

Payment for import and export goods must be made through a bank, and companies must notify customs the account number and list of banks

5. Internal control system

An enterprise's internal management system is considered to be satisfied if the following conditions are met:

- 1) Retention and implementation of regulations to manage, monitor and control the overall operation of the enterprise
- 2) Having internal control measures and means to ensure the safety and security of the supply chain of the following import and export goods
 - A. Monitor the process of transporting goods between the workplace and the port
 - B. Safety inspection before the container is loaded onto the vehicle
 - C. Supervision of critical areas such as fences, entrances, exits, bonded warehouses, manufacturing areas, administrative areas, etc.
 - D. Placement and personnel transfer to suit the job description
 - E. Security control of information technology systems
 - F. Ensure employee security

6. Compliance with accounting and audit laws

The annual financial statements must be audited by an accounting audit company qualified to provide audit services in accordance with the Independent Audit Act. The audit results on the financial statements mentioned in the audit report should be acceptable according to Vietnam's audit standards.

IV. Procedure and deadline

Acceptance of AEO certified applications -> Document screening
-> Audit report processing -> Issuance of certified decisions

- Provide confirmation of receipt of documents and request for correction of insufficient documents within 5 business days from the date of receipt
- Conduct on-site audit within 5 business days
- Notify the final decision within 30 business days from the date of receipt of the document (if additional confirmation is required, it is possible to be extended up to 30 business days)

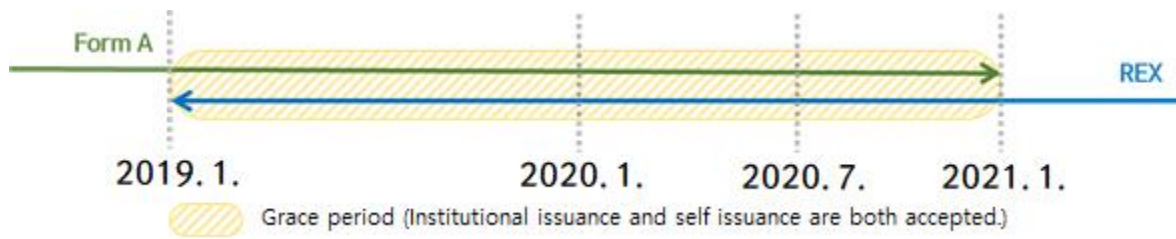
The EU allows the institution issuance of Vietnam's GSP origin certification method (Form A) until 2020.

If you are exporting from Vietnam to the EU and wish to receive GSP tariff benefits, you must submit a GSP Certificate of Origin.

Prior to 2019, only Form A issued by VCCI (Vietnam Chamber of Commerce) or MOIT (Vietnam Ministry of Industry and Trade) was recognized as a certificate of origin. (Issued by institution)

However, from January 2019, the REX system was introduced, allowing the user to choose between institutional issuance and self issuance, and from January 1, 2020, the institutional issuance of Form A was to be discontinued and the full transition to self issuance using the REX system was planned.

The timing of the full transition to the self issuance method has been delayed once from January 1, 2020 to July 1, 2020. However, due to the worldwide Covid-19 outbreak, it is difficult for some countries to comply with the full transition to self issuance using the REX system. Considering the factors, the EU delayed the period of the full transition of the self issuance of the GSP origin verification method of Vietnamese export goods to January 1, 2021. Companies exporting from Vietnam to the EU need to keep the changes in mind.



※ This information is constructed and rearranged by SHINHAN Customs Vietnam Co., Ltd. based on a released letter from Vietnam and has no legal effect.

※ For more information, please contact

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Customs Trade Related Law Changes

Establishment of 「Notice on Administrative Processing of Support for Export and Import Cargo Inspection Cost」

Title of Administrative Rule

「Notice on the administrative processing of support for inspection cost for export and import cargoes」

Reason for establishment

The proviso to Article 173 (3) of the Customs Act and the enforcement ordinance of Article 187-4 of the Enforcement Decree of the same Act stipulates details for the implementation of the support system for inspection cost of import and export cargo.



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Main Contents

- Scope of companies and products subject to inspection cost support (Articles 2 and 3)
 - ① (Company) Small and medium-sized entrepreneurs under Article 2 of the Framework Act on Small and Medium Enterprises or mid-sized enterprises under the Special Act on Promotion of Growth and Strengthening Competitiveness of Mid-sized Companies, Article 2 paragraph 1
 - ② (Goods) Goods subject to management, goods cleared directly from the dock, and goods exported for loading site inspection
- Regulations on the types and payment criteria of support for inspection cost (Articles 5 and 6)
 - ① (Target) Transportation fees, loading/unloading fees, and forwarding/entry fees incurred during container inspection
 - ② (Payment amount) Support for actual inspection costs according to the payment criteria set by the Commissioner of the Korea Customs Service
- Application method and procedure for inspection cost, reviewing by the head of customs office, etc. (Article 9~Article 15)
 - ① Applicant (shipper, customs company, etc.) submits the application form through the internet customs clearance system with the proof of inspection cost attached.
 - ② The head of the customs office will check whether the requested product matches the inspection product, the eligibility of the application, and whether the inspection result is within the normal range as well as the appropriateness of the application amount.
- Supervising of the grounds for the consignment of business, the scope of the examination for the consignee, and the work of the Commissioner of the Korea Customs Service (Articles 16~22)
 - ① Consignment of business to a corporation or organization specified in Article 288 (10) of the Enforcement Decree

- ② Compliance with the Administrative Procedure Act on the regulations and business processing period regarding the scope of work of the consignee and the direction and supervision of the Commissioner of the Customs Service for the entrusted agency

Subject to regulation

Not applicable

Note

The scope of support for export and import cargo inspection costs must meet the criteria determined by the Commissioner of the Korea Customs Service and should be in the budget range for container loading/unloading fees and forwarding/ import fees for import and export cargo inspection.

Also, although the subject of regulation is not specified separately, the subject of exclusion of support is separately defined. It is necessary to check whether it is subject to exclusion.

* Exclusion of support

- ① A person who is delinquent in payment of taxes such as customs duties collected by customs
- ② A person who is delinquent in payment of taxes that is entrusted with disposition for arrears to the head of a customs office pursuant to Article 30-2 of the 「National Tax Collection Act」
(If you have paid arrears before applying for support for inspection fees, you are eligible to apply.)



Customs Case

Whether goods temporarily used for participation in international conventions are subject to re-import tax exemption pursuant to Article 99 of the Customs Act

Backgrounds

On January 6, 2013, company A exported the item in question for the purpose of participation in the international convention. On January 3, 2014, company A re-imported the item in question and applied for re-import tax exemption pursuant to Article 99, No. 1 of the Customs Act. The Disposal Administration accepted it.

The disposition agency considered that international conventions do not fall under the “exhibitions, etc.” stipulated in Article 99 of the Customs Act, and do not qualify for re-import tax exemption on the grounds that they were “used” in the international conventions for the item in question. On December 5, 2018, Company A was notified of the correction of customs duty OOO excluding penalties.



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Claims and opinions of the disposition agency

Claim

(1) The item in question was only re-imported after participating in the international convention, and it is difficult to say that it was “used” overseas because it was not imported because either its value increased or created new added value different from the previous export. (2) Even if it is considered 'used', it is exported for temporary use in accordance with the participation contract established by the participation agreement (indication of intention to participate in the convention) and the approval of the event organizer (intent to approve the participation). Article 99, item 1 'used under contracts, etc.' and is subject to re-import tax.

Disposal Agency Opinion

(1) 'Use', which is not accompanied by the creation of added value, also falls under the 'use' which is restricted by re-importation tax. (2) In civil law, a 'contract' is a contract in which a contractor promises to complete a job and agrees to pay compensation for the result of the job. The contract for participation in the international convention can't be considered as a 'contract, etc.' It is not eligible for re-import tax exemption.

Hearing and judgment

Since the items at issue were imported after participating in the international convention, it is difficult to regard them as re-imported after their added value has increased. As a requirement for tax exemption from re-import, it cannot be interpreted as the contract that serves as the basis for export. It would be sufficient if the export was made based on an agreement such as a contract with the contents of temporary use abroad, and it seems reasonable to interpret that the lease or contract agreement here is an example of such agreement. It appears disposition of imposing customs duties, etc., is at fault as the Disposition Administration considers that the item at issue is not subject to re-import tax exemption pursuant to Article 99 of the Customs Act.

Commentary

As the number of cases of applying the re-import tax exemption similar to the case in question increased rapidly, a new rule was established that permits re-import tax exemption for items temporarily taken out for participation in international conventions, etc. (Article 54 of the 「Enforcement Rule of the Customs Act」, Effective Date March 13, 2020)

Considering the purpose of the re-import tax exemption system operated on domestic products and double taxation, a broader interpretation of the scope and application of the 'use' prescribed in Article 99, Item 1 of the Customs Act is necessary. Companies need to consider in advance whether re-imported goods are eligible for re-import tax and whether re-imported goods have created added value abroad.

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