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Important changes in the New Customs Act

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The Thai Customs Act was enacted in 1926 and has undergone several changes during the past nine decades of its existence. Despite the amendments, however, some provisions continued to pose problems for importers, exporters and business operators.

In an effort to address these problems, the government has enacted a new Customs Act BE 2560 (2017). It was published in the Royal Gazette on May 17 and will become effective 180 days from the publication date. This article describes some of the Act's key points that will affect business operators, importers and exporters.

Time limits for duty evaluation: Customs officers are entitled to evaluate duty under the Act and the customs tariff law within three years from the date of submission of an import or export entry clearance form. In situations where the officer cannot make an evaluation within the allotted time period, the director-general of the Customs Department is entitled to extend the deadline by a maximum of two years. If the director has evidence to believe that the duty payer intended to avoid paying the duty, the officer has an additional five years to evaluate the duty.

The main reason for limiting the time frame for evaluation is that companies have experienced problems when customs officers evaluated duties too far back in time. In such cases, companies often did not possess the required documents, as they had been either lost or destroyed. It is hoped that this problem will be resolved with the introduction of the new time limits.

Reduced penalties: Under the Act, some offences -- such as importing or exporting goods with the intent to avoid paying duty -- can result in a maximum prison term of 10 years, and/or a fine from one-half to four times the amount of the duty evaded. The court is entitled to seize the goods even if there is no person to be punished under its judgement. These penalties are generally lower than those under the old law.

Change of presumed liability: The old Act contained strict liability for directors and officers, unless they were able to prove that they were not involved in the offence, admitted to the offence, or acted reasonably to prevent the offence. The new Act changes this principle.

Under the new law, if the offender is a juristic person, and if the offence occurred due to the order or act of any director, manager or person responsible for business operations, that person will face the same criminal penalties as the juristic person. Moreover, if the director, manager or responsible person neglected his/her duty, which caused the juristic person to carry out an offence, the director or manager will also face the same criminal penalties as the juristic person.

Appeal timelines: The Act states that the Board of Appeal, an internal appellate review panel within the Customs Department, has 180 days to perform its review, counting from the date on which the customs officer receives the appeal and a complete set of supporting documents. If the board does not finish reviewing the appeal within the specified deadline, the importer or exporter who submitted the appeal can submit a court claim.

In addition, if necessary, the finance minister is entitled to appoint an additional Board of Appeal or several boards.

Reduced incentives and rewards: A common complaint among business operators has been that the incentive and reward payments that customs officers were entitled to were too high under the old Act. This issue, companies argued, was an obstacle to doing business and served as a disincentive for imports and exports. The new Act seeks to address this concern by reducing incentive and reward amounts.

In addition, the director-general of the Customs Department, with the finance minister's approval, is entitled to deduct money from the sales price of seized goods, or deduct money from a fine if there are no seized goods or if the goods cannot be sold, and pay the deducted money as an incentive and a reward.

For some offences, the deduction rate is 40% -- 20% as an incentive payment and 20% as a reward amount. More importantly, the new Act introduces a cap of 5 million baht on the incentive payment and 5 million baht on the reward payment.

Business operators should also be aware of changes to other important provisions in the new Act, including a clear deadline for return of duty guarantees. Lawmakers hope that the new Customs Act will promote and facilitate import and export activities, and generally reduce obstacles when doing business in Thailand.

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