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Thailand Amends Settlement Guidelines for Customs Disputes

On November 13, 2017, Thailand introduced substantial amendments to the Thai Customs Act, an act that had long been considered outdated, controversial, and lacking in clarity. Numerous important provisions therefore became effective, offering a new platform upon which Customs authorities, law enforcement officials, and the Thai courts could operate.

While the amended Customs Act did address many of the important and controversial issues of its predecessor and has generally been welcomed by business operators, there remained some areas in which further guidelines were required. One such area was the need for clarity in customs dispute settlements.

This gap was addressed by the issuance of customs settlement guidelines by the Director General of the Thai Customs Department on November 22, 2017, with the order repealing the Practical Regulation Code for Customs B.E. 2556 (2013) and its amendments and replacing them with the Practical Regulation Code for Customs B.E. 2560 (2017). The new regulation provides important practical guidelines on customs matters, including specific internal guidance for the settlement of customs disputes.

This article highlights notable aspects of the new customs settlement guidelines, with a specific focus on duty evasion claims under section 243, which is of particular relevance for many business operators and management.

Prior to November 22, 2017, false customs declaration (i.e., duty evasion) under section 27 of the previous Customs Act faced a fine of two times the amount of the duty evaded, payment of the actual duty owed, plus an additional fine equal to the value of tax evaded, if any. Any unauthorized amendment, addition, or deletion of any statement in the declaration documentation, or forgery of seals, signatures, or official marks, which cause the occurrence of duty evasion, was subject to a fine of four times the amount of the duty evaded, plus an additional fine in an amount equal to the tax evaded, if any.

Additionally, total fines and damages could not be less than THB 50,000. Further, any products hidden or otherwise concealed from investigation by officers, which were imported together with otherwise properly cleared goods, were subject to a fine of four times the amount of the duty evaded, plus an additional fine in an amount equal to the tax evaded, if any, and the goods subject to forfeiture to the state.

In the new guidelines for settlement of claims of false declaration under the amended Customs Act, section 243 provides for a change in settlement of fines, as follows:

1. If the duty evaded does not exceed THB 50,000, the fine will be half the value of the duty evaded. Payment of the tax and duty evaded must also be made, with a fine and interest under the law, if any.
2. If the duty evaded exceeds THB 50,000, but is less than THB 100,000, the fine will be equal to the duty evaded. Payment of the tax and duty evaded must also be made, with a fine and interest under the law, if any.
3. If the duty evaded exceeds Baht 100,000, the fine will be two times the amount of the duty evaded. Payment of the tax and duty evaded must also be made, with a fine and interest under the law, if any.
4. Any amendment, addition, or deletion of any statement in the declaration documentation without permission, or forgery of seals, signatures, or official marks, which cause the occurrence of duty evasion, will be subject to a fine of four times the amount of the duty evaded with an additional fine equal to the value of the tax evaded, if any. This more severe fine is similar to guidelines provided in the previous regulation.
5. Any products hidden or otherwise concealed from investigation by officers, which are imported together with otherwise properly cleared goods, will be subject to a fine of four times the amount of the duty evaded, and may be subject to forfeiture to the state.

Section 243 of the amended Customs Act also provides for the court to have the discretion to adjust monetary penalties for conviction on a case-by-case basis. This discretion did not exist under the previous Customs Act. As such, an accused now has less pressure to consider settlement than in the past, since the court now has the discretion to assign punishment on a case-by-case basis. An accused may now more accurately assess whether to defend the case at trial rather than settle claims at an earlier stage. This is a positive development that provides more flexibility for both the accused and the court, and it is hoped that future amendments will expand the court's discretion in assigning punishment at the trial court level even further. 🏛️

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