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No. 168 : Single-Point Additional Duty Payment Program

The Customs Department is offering its “Single-Point Additional Duty Payment Program” (“Program”) to importers/exporters or entrepreneurs. The Program is intended to assist these commercial taxpayers self-disclose customs violations and make the correct tax payments. This Program is the first of its kind under the Customs Act B.E. 2560.

As with the “Voluntary Audit” scheme, the Customs Department offers this Program as part of its intention to create good relationships with commercial taxpayers, foster their compliance, and resolve unintentional customs offenses.

The Program is available between **1 April 2018 and 30 April 2019**.

The edition that follows addresses interesting points about the Program, those eligible to participate, and steps to join.

What is interesting about the Program?

The Program offers businesses the chance to pay owed duties and taxes shortfalls and to receive waivers of customs and VAT penalties. To earn the waivers, business owners must prove that they did not intentionally evade taxes. This is generous offer as customs penalties are typically imposed at 0.5 to 2 times the duty shortfall if found within the context of an audit.

Customs surcharges and VAT surcharges, however, are not waivable under the Program. Typically, customs surcharges are levied at 1% per month (capped at one times the duty shortfall), while VAT surcharges are at 1.5% per month (capped at one times the VAT shortfall).

Nonetheless, the 1% customs surcharge per month may be reduced according to the Ministerial Regulation Re: Criteria for Surcharge Reduction B.E. 2560 (2017), announced on 13 November 2017, as they also apply to self-declarations (typically instances where penitent commercial taxpayers voluntarily present themselves at the Customs Department).

The following customs surcharge reductions rates can apply to the corresponding circumstances:

0.25% per month where the duty shortfall payment is made within one year from the release date of the goods from Customs or from the date of exportation.

0.5% per month where the duty shortfall payment is made over one year (but not exceeding to two years) from the release date of the goods from Customs or from the date of exportation.

0.75% per month where the duty shortfall payment is made over two years (but not exceeding to three years) from the release date of the goods from Customs or from the date of exportation.

Who can join the Program?

Importers, exporters, and general business owners incurring customs duty and taxes upon the import and/or export and who have identified their own customs infractions (e.g. undervaluation, incorrect tariff classifications), are generally eligible to participate the Program.

However, to be eligible, potential participants must not be under audit investigation, or internal processing by the Customs Department, Economic Crime Suppression Division, or Department of Special Investigation. Further, potential participants must not be involved in:

- Duty evasion with evidence of fraudulent intention;
- Smuggling (e.g. hand-carried goods);
- Trade of counterfeit items; or
- Evasion of import/export restrictions (e.g. import or export without license).

How does one join the Program?

The eligible business owner must submit a written letter, according to the official form, to the Customs Post Audit Bureau (Customs Department) requesting to join the Program. The business owner must provide the relevant evidence to the Customs Official for its consideration within 30 days from submitting its letter. For this purpose, the Customs Department has published a sample letter/form downloadable at:

http://www.customs.go.th/data_files/7326c368bf33414bcae5c606d5a3aeed.pdf

Author's Note:

i *Business owners should take advantage of this Program. They may start by conducting a self-review of their activities and transaction, especially to verify the accuracy of duty and tax payments. This can help them determine whether they are eligible to participate in the Program.*

If they do participate in the Program, but do not qualify for it, they will not receive the customs and VAT penalty waiver. Rather, the Customs Department will impose much higher penalties for their violations (in some cases, up to 4 times the value of goods, plus duty and VAT).

All potential participants are urged to make carefully review their eligibility before requesting the Customs Department for permission to join.



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No. 169 : Five businesses to be removed from FBA's Annex III

The Director-General of the Department of Business Development (“DBD”) recently announced removal of the following five services businesses from List III (21) of the Foreign Business Act B.E. 2542 (A.D. 1999) (“FBA”):

- Accounting services;
- Legal services;
- Space and facility rental services;
- Lending services; and
- Consulting services.

If approved by Cabinet (and published in the Royal Government Gazette), foreign investors could then provide these services to their affiliated companies and group companies without obtaining a Foreign Business License or Certificate.

▪ What is the FBA?

The FBA took effect on March 3, 2000, replacing the Alien Business Law of 1972 (also known as National Executive Council Announcement No. 281).

The FBA, like its predecessor, restricts foreign participation in certain businesses, e.g. businesses prohibited for special reasons, businesses in relation to security or those affecting culture, tradition, natural resources and environment, as well as businesses in which Thai nationals are not yet ready to compete against foreigners. Foreigners are prohibited or restricted from participating in businesses according to three lists.

List III designates businesses in which Thai nationals are not yet ready to compete with foreigners, including wholesale, retail, and service business. Foreigners must obtain a Foreign Business License or Certificate before engaging in List III activities.

Prior to 1972, foreigners were generally permitted to do business in *Thailand* with fewer restrictions.


▪ Relaxation of Restrictions on Service Businesses

The relaxation is interpreted as government's attempt to recalibrate foreign participation in Thailand's commerce, and promote the competitiveness of Thai companies, but also encourage foreign investment.

The Director-General of the DBD, according to sources, claims that the relaxations will reduce the complexity and complications of laws, and, likewise, encourage foreign investors to do more business in Thailand.

The amendment to Annex III will be soon submitted for Cabinet approval. According to DBD sources, the measure is expected to be effective this September, its anticipated publication in the Royal Government Gazette.

Author's Note:

 *As of this edition, the five services are still restricted under List III (21) of the FBA. Until publication in the Royal Government Gazette, if at all, foreign investors must still obtain a Foreign Business License or Certificate, as their circumstances warrant, prior to engaging in these services. Penalties will otherwise apply.*

Foreign investors should also note that, despite approval of the measure, they must still follow accounting procedures and file their audited financial statements with the DBD.

Further, foreign investors must still comply with all other laws and regulations, and obtain all relevant licenses from government authorities relevant to their operations in Thailand.



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No. 170 : Goods & Raw Materials Report for VAT purposes

The Revenue Code requires VAT operators engaging in trade and manufacturing businesses to prepare a Goods & Raw Materials Report for VAT purposes. From the author's experience, several trade and manufacturing companies do not prepare complete Goods & Raw Materials Reports. This article provides general rules about the report, tax implications, and penalties imposed on violating operators.

▪ Requirements to prepare a Goods & Raw Materials Report

Section 87 (3) of the Revenue Code requires VAT operators who engage in trade and manufacturing businesses to prepare Goods & Raw Materials Report. By doing so, operators will know sales amounts and the remaining inventories, including receipts and disposals of raw materials. In addition, the Revenue Department normally examines the Goods & Raw Materials Report of VAT operators during tax audits to check whether businesses keep proper records and correctly pay taxes correctly.

The VAT operators must prepare the report in the format designated by the Director-General of the Revenue Department. Or at least, the report must contain important information, for example:

- name of the report
- name of the operators,
- place of the business,
- tax identification number,
- name of the goods or raw materials,
- characteristics of the goods/raw materials, e.g. size and quantity,
- number of key referral documents,
- remaining balance,
- date time of receipt or disposal,
- etc.

The report must be prepared according to the types of the goods or raw materials. The VAT operators must record the movement of the goods and raw materials within three working days from the date of their receipt or disposal.

However, in practice, we discovered that operators do not strictly follow the report format designated by the Director-General of the Revenue Department. In some cases, the reports

do not contain key information as required by the law.

▪ Penalties

Where VAT operators fail to prepare complete Goods & Raw Materials Report, they may face the following:

- Penalties at 200% of the VAT calculated according to the tax base of the goods or raw materials that are not shown in the report (Section 89 (10) of the Revenue Code)
- Criminal penalties not exceeding Baht 2,000.

▪ Missing Goods & Raw Materials from the Report


In addition to the Goods & Raw Materials Report, VAT operators must also be aware that where physical goods or raw materials are missing from the inventories, i.e. physical stocks are less than those shown in the report, the VAT operators would be liable to further tax liabilities.

In general, where physical stocks are missing, the Revenue Department would, under Section 77/1 (8)(e) of the Revenue Code, deem that the missing inventories have already been sold. Two tax implications arise.

First, missing inventories are deemed sold for VAT purposes. The VAT operator must pay VAT, i.e. output tax on the missing stock. A self-assessment and payment of VAT of the missing inventories may not be subject to a penalty and surcharge. However, where the missing inventories are discovered by the Revenue Department, e.g. during a tax audit, the VAT operator would be liable to the penalties and surcharges.

Second, the VAT operator may have to treat the missing inventories as sales for Corporate Income Tax (“CIT”) purposes. More specifically, the VAT operator would have to recognize the sales revenue from the missing inventories in its CIT calculation and pay CIT on the net profits at the rate of 20%.

Author’s Note:

 *The Revenue Code requires VAT operators who engage in trade and manufacturing businesses to prepare a Goods & Raw Materials Report so that the business and the payment of taxes can be correctly examined. It is very important for the VAT operator to strictly follow the legal requirements for its own benefits for both commercial and taxation points of view. In addition, the operators should carefully manage its goods and raw materials to avoid missing stock and prevent any resulting negative implications. VAT operators should review their own operations and prepare the Goods & Raw Materials Report required by the laws. Doing so not only prepares VAT operators for inquiries and investigations by authorities, but can also help create better internal governance.*



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