

# KPMG Ukraine informs

May 2012

## Main Changes and Amendments in the New Customs Code of Ukraine.

In the previous issues of the KPMG Customs Bulletin, we informed our readers about adoption of the new Customs Code of Ukraine. Below we describe the main changes to take effect from 1 June 2012.

It is known, that most international companies outsource the services on declaration of imported/exported goods. This is why preservation of a clear efficient procedure of goods customs clearance by customs brokers was critical such companies. The legislator was rather loyal to the activity of customs brokers and did not impose any conditions restricting or complicating their activities in the new Customs Code. We would like to remind that previous drafts of the customs code stipulated that to engage in customs brokerage activity it was required to conclude agreement of financial guarantee in favor of the state budget. The amount of the financial guarantee was at least 300 thousand euros.

Nevertheless, according to the new Code, the activity of the customs brokers will be only subject to a license which will be issued on the conditions and according to the procedure stipulated in the Law of Ukraine "On Licensing of Certain Types of Business Activity".

After enforcement of the new Code, the importers will acquire the right to clear the goods in any customs body irrespective of the place of customs registration of the importer. However, the Code provides certain exceptions. In case the Ministry of Finance of Ukraine issues respective orders, the customs clearance of goods subject to excise duty, natural gas, goods subject to stamping by state standard mark, and medicines shall be performed only in specially designated customs houses.

Furthermore, the new Code changes the deadlines for declaration of the goods. While in the past the goods were subject to declaration within 10 calendar days after their delivery to the customs of destination, the new code extended this term to 10 business days. There is one more restriction. For example, in case a customs declaration is denied, then the importer must submit new declaration within 10 business days after the day of denial. Finally, in case the goods are not deposited in the temporary warehouse or customs body warehouse within 30 days after their delivery to the customs house, such goods will automatically obtain the status of goods stored on the customs warehouse. In its turn, such status will entail certain legal implications.

In addition, to prevent possible abusive acts on the part of the customs bodies, the new rules oblige the customs house to give to the customs applicant the option of independent registration in the customs electronic system of the fact of customs clearance of goods and the time of performance of relevant procedure.

According to the new customs rules, the customs clearance must be completed within 4 hours after the moment of presentation of the goods, customs declaration and required documents at the customs house. At the same time, the above rule stipulates exceptions when the above 4-hour deadline may be extended. This may happen, for example, in case of necessity to carry out formal acts beyond the customs house, to carry out trials of samples of goods, to obtain additional documents, etc. Unfortunately, the practice shows that such limitation of the time frame of the customs clearance procedure does not always accelerate the clearance process. Such limitations were applicable before, but in order to meet those deadlines, some customs houses used various pretexts to issue cards of refusal to carry out customs clearance of goods. As a result, the customs house executed several declarations in respect of the same lot.

One really progressive innovation is the opportunity to declare goods in advance of their arrival to the destination customs house via submission of preliminary customs declaration. Under this option, the importers are entitled to submit copies of required documents in case of absence of original documents, although the responsibility of the customs applicant for the details in the preliminary customs declaration will arise after the moment of acceptance of such declaration by the customs house officer. Therefore, the goods customs clearance will be performed after the transfer of the goods across the border, but without presentation to the customs to the customs body. It is expected that resolution on the feasibility of such clearance will be taken by the customs house based on the results of risks analysis.

As regards determination of the customs value of imported goods as a basis for taxation, this procedure underwent significant changes. After reading this section, one could expect that the rules of assessment of the customs value will be more aligned with the provisions of the General Agreement on Tariffs and Trade (GATT) and the provisions of the Customs Code give priority to the first method of determining the customs value.

The list of basic documents to be submitted for determining the customs value did not change much. It includes contract, invoice, shipping and insurance documents, customs value declaration, etc. In addition, the Customs Code limits the right of the customs house to require additional documents to confirm the customs value. From now on, additional documents will only be submitted upon the written request of the customs house (within 10 days) and only in instances where the major documents contain discrepancies, indications of falsification or do not contain all the data regarding the selection of the method for the determination of the customs value.

Also, according to the new rules, companies will have the right to demand from the custom house explanations of:

- reasons based on which the custom house believes that the price of goods was affected by the relationship between the seller and buyer;
- reasons based on which the declared customs value cannot be determined;
- reasons that led to the adjustment of the customs value, the procedure and method for its determination.

The new Customs Code establishes the conditions under which the customs house may take decisions on the determination of customs value. These include the conditions under which the company declared incomplete and/or inaccurate information on the customs value of goods, including incorrect determination of the customs value of goods. At the same time, the Customs Code defines the instances of incorrect determination of the customs value and the instances of submission of incomplete (inaccurate) information: wrong calculation of the customs value, non-submission of basic documents, the inadequacy of the chosen method for determining the customs value, the receipt of information from custom houses of other countries regarding unreliability of the declared customs value.

Analyzing the new Customs Code, it is worth noting the establishment of the institute of Authorized Economic Operators in Ukraine. To be registered as an authorized economic operator, an entity should first undergo a self-test to assess its compliance with certain criteria (e.g. compliance with effective laws and regulations, solvency, compliance with security standards, appropriate reporting and accounting system), and then submit respective application to the customs house. Customs authorities perform preliminary review, and, based on the results of the review, the State Customs of Ukraine takes the final decision. In accordance with new Customs Code of Ukraine, an applicant should meet the following criteria:

- experience of foreign economic activity for no less than 3 years;
- absence of any amounts due to customs;
- 3-year absence of identified customs rules violations subject to prosecution under Articles 472, 482 - 485 of the Code;
- availability of special accounting system (for further verification of documents and data);
- absence, as at the date of application, of any outstanding payment obligation imposed as the result of documentary inspection.

Authorized economic operators will be entitled to: remove customs seals and stamps at own discretion, export goods without presentation at the customs, deposit goods for temporary storage warehouse without obtaining special customs' approval, file a single declaration in respect of goods imported or exported during a certain period, etc. However, one of the most important improvements for an authorized economic operator is the right to automatically apply the basic (first) method of assessment of customs value. Operators will only submit primary documents to the customs for verification of the declared customs value, and customs value control will be performed subsequent to customs clearance. In addition, the Code's provisions limit scheduled on-site audits of authorized economic operators to one audit in three years.

Generally, new Customs Code of Ukraine can be evaluated as more progressive as compared to the current Code. However, the quality of the new Code may be only assessed reliably only after its application in practice.

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