



## Briefing paper: Customs compliance

**You might well be importing, processing\*, exporting or re-exporting goods whilst delegating the customs formalities to a third party service provider. This delegation might well expose your business and you – personally – to an array of customs liabilities, such as the incurrence of a ‘customs debt’ and civil penalties.**

*\* Processing includes repacking, sorting, repair, destruction or more complicated manufacture.*

### Customs compliance

It is a requirement that if you engage in:

- international trade in goods
- the import or export of goods privately

that you must comply with European Community (EC) and national legal requirements.

### The Law

The Finance Act 2003 (*Sections 24 to 41*) provide for 2 types of civil penalty:

- The civil evasion penalty, which is dealt with separately in Customs Notice 300: civil evasion penalty investigations - statement of practice.
- The civil penalty for contraventions of customs rules relating to certain specified taxes and duties.

The Act defines these taxes and duties as:

- Customs duty
- Community Export duty
- Community Import duty
- Import Value Added Tax (VAT)
- Customs duty of a preferential tariff country.

The Customs (*Contravention of a Relevant Rule*) Regulations 2003 were made under powers conferred in the Finance Act 2003. They include a schedule, which lists:

- The contraventions that may be penalised.
- The person who may be liable.
- The maximum penalty that may be imposed.

The Export (*Penalty*) Regulations 2003 make provision for civil penalties for contraventions of customs rules that may not be directly related to a relevant tax or duty. They include a schedule of export contraventions that may be penalised.

These Regulations were made under powers conferred by the European Communities Act 1972. The schedule lists:

- The contraventions that may be penalised.
- The person who may be penalised.
- The maximum penalty that may be imposed.

### Customs Civil Penalties (CCP)

These penalties are used to encourage compliance with Customs law. HMRC is obliged under EC agreements to promote compliance with EC provisions and to have arrangements in place to counter non-compliance.

Civil penalties are seen as an appropriate sanction in most cases. Civil evasion penalties and prosecution remain an option in certain circumstances.

The maximum CCP's provided in law are £2,500 per contravention for the more significant irregularities and £1,000 per contravention for others.

### Time Limits for CCP

Should HMRC decide to issue a penalty they must do so within:

- Three years from the date on which the contravention took place.
- Two years from the day on which they became aware of the facts, sufficient in our opinion to justify a penalty.

### Mitigation

The Law does not define the grounds for mitigation so HMRC will look at all the facts of your case.

HMRC will give due consideration to:

- The circumstances, which contributed to the contravention.
- Take into account your previous compliance history.
- May recognise and acknowledge the degree of co-operation given to our officers once your liability to a penalty has been established.

- Any remedial action taken to prevent similar contraventions in the future

HMRC believes that mitigation is subjective and the amount allowed will depend on the specific circumstances of your case.

### Make a voluntary disclosure

Should you realise that you have a customs debt, attributable to not being fully customs compliant, you are able to make a voluntary disclosure.

HMRC have 3 years from the date the customs debt was incurred to notify you of the customs debt. This is normally the date of the customs entry. There's no time limit applied to voluntary disclosures.

If the debt is the result of an act that could have resulted in criminal court proceedings at the time it was committed then notification and recovery can occur after the 3-year limit.

### Representation and agent liability

In our experience, businesses appoint an Agent to act on their behalf. You, as the *'principal'* may appoint an Agent to act on their behalf, provided that the Agent is established within the customs territory of the EU.

There are two types of Agents (*'representation'*):

- Direct representation, where the representative acts in the principal's name.
- Indirect representation, where the representatives act in their own name but on behalf of the principal.

If the representative does not state the type of representation on the customs declaration, or is not empowered to act as a representative, they will be considered to be acting in their own name on their own behalf.

You should keep written confirmation of the type of representation agreed with your Agent.

### Customs duty liability

The cornerstones of customs, which you need to consider when importing or exporting a product:

- Tariff classification
  - *What is it?*
- Customs valuation
  - *What is its price?*
- Origin
  - *Where is it from?*

are used to determine your customs duty liability.

The adherence to the cornerstones and to the customs processes and procedures constitute customs compliance.

### Reducing your customs duty liability

It is possible, dependant on your economic activity, to reduce your customs duty liability through the application, authorisation and use of a number of Customs Special Procedures (CSP).

#### Processing

- Inward Processing (IP)
- Outward Processing (OP)

#### Specific Use

- Temporary Admission (TA)
- End Use (EnU)

#### Transit

- External
- Internal

#### Storage

- Customs Warehousing (CW)
- Free Zones

### Managing your Customs risk

You are able to manage your customs risk effectively by accounting for the cornerstones of customs, and to ensure that in the instance of the use of Customs Special Procedures, there are effectively managed and controlled.

The risk of not being a customs specialist is that you might well neglect customs risks, since these might not be that apparent to you. These risks could be remedied by employing our customs methodology.

### Time to act

If you are importing, processing (*including repacking, sorting, repair, destruction or manufacture*), exporting or re-exporting goods whilst delegating the customs formalities to a third party service provider, and have doubt about your customs compliance.

Just because you have not had any interaction of HMRC does not imply that you are customs compliant.

Please contact one of our Indirect Tax specialists for further information:

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