

Tax Analysis

Customs voluntary disclosure program updated guidance published

On 8 October 2023, China's General Administration of Customs (GAC) published updated guidance (GAC Bulletin [2023] No. 127, or Bulletin 127) on its voluntary disclosure program (VDP). Bulletin 127 aims to promote the program by significantly expanding the application scope, so that affected importers and exporters may better use the program to improve compliance. The updated guidance became effective as of 11 October 2023, superseding the previous guidance (GAC Bulletin [2022] No. 54, or Bulletin 54), and will expire on 10 October 2025.

The VDP was initially introduced into the Chinese customs regulations in 2016. The program allows importers and exporters to apply for a reduction, mitigation, or waiver of administrative penalties on certain incidences of noncompliance relating to customs regulations, provided that they report such noncompliance in writing before the noncompliance is discovered by the customs authorities. Previously, the VDP application was limited to tax-related noncompliance. The GAC introduced multiple adjustments that are potentially favorable to importers and exporters in a draft version of the updated guidance in June 2023, notably the expansion of the application scope to include certain nontax-related noncompliance, signalling the government authorities' intention to promote the program.

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Highlights of Bulletin 127

Tax-related noncompliance

For China's customs purposes, tax-related noncompliance generally refers to customs noncompliance relating to taxes collected by China's customs authorities (e.g., customs duty, import VAT). Therefore, customs noncompliance relating to refunds of VAT/consumption tax for exports is not considered tax-related noncompliance.

a. Timing requirement

According to Bulletin 127, administrative penalties for tax-related noncompliant activities that are reported voluntarily in the program will be waived in either of the following situations:

- The noncompliance is reported within six months from the date the activities occurred; or
- The noncompliance is reported after the six-month period but within two years from the date the activities occurred, and either the underpaid tax is less than 30 percent of the tax payable or the underpaid tax is less than RMB 1 million.

To apply for the program in the latter situation, Bulletin 127 relaxes the timing requirement to report a tax-related noncompliance by changing "one year" in the previous guidance to "two years." The extension should allow importers and exporters more time to identify and apply for the VDP for tax-related noncompliance.

b. Late payment surcharge

According to Bulletin 127, late payment surcharges may be reduced or waived for tax-related noncompliant activities that are reported voluntarily in the program and the affected importer or exporter has made corrections in a timely manner, regardless of whether administrative penalties are imposed or waived on such noncompliance.

The updated guidance appears to be more favorable to importers and exporters, as the previous guidance only granted a reduction or waiver of late payment surcharges in situations where administrative penalties were waived.

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Nontax-related noncompliance

One notable change brought by Bulletin 127 is the expansion of the application scope of the VDP to include a list of noncompliant activities where no customs duty or import VAT was underpaid. For example:

- Certain noncompliant activities resulting in an adverse impact on the administration of export refunds of VAT/consumption tax (e.g., certain errors in an export declaration resulting in the incorrect calculation of refundable VAT for exports);
- Certain noncompliant activities relating to processing trade relief;
- Certain noncompliant activities resulting in an adverse impact on customs supervision/customs statistics (e.g., certain errors in a customs declaration of duty-free goods); and
- Certain noncompliant activities violating quarantine and inspection rules.

Administrative penalties will be waived if the relevant importers or exporters voluntarily report the aforementioned nontax-related noncompliant activities through the program. Unlike the tax-related noncompliance, Bulletin 127 does not set a timing requirement for the VDP for some of the newly added nontax-related noncompliance disclosures in order to make the program more accessible.

Application for “same noncompliance”

Bulletin 127 provides that, after a party voluntarily reports the noncompliant activities by applying for the VDP, it generally has to wait at least one year (i.e., 12 consecutive months) to apply for the VDP again for the “same noncompliance,” which is further defined as the noncompliance that has the same nature and has breached the same article/paragraph of the customs regulations.

The above rule is another significant relaxation as the previous guidance does not allow the program to be used again for the “same noncompliance.”

However, the program can be applied only once for noncompliance involving royalties related to the “same goods,” regardless of whether the royalties were under a one-time or multiple licensing arrangements. The Chinese language of “same goods” is vague and may be interpreted as the same piece, batch, or type of goods, so further clarification is needed.

Authorized Economic Operator (AEO) status

According to Bulletin 127, where a company with AEO status voluntarily reports customs noncompliant activities (rather than just tax-related noncompliant activities under the previous guidance) under the VDP, the company can continuously enjoy AEO-related preferential treatment during the period in which the customs authorities conduct investigations about the reported noncompliance, unless such noncompliance relates to customs quarantine matters for safety, environmental protection, and/or hygiene considerations.

Observations

With the expansion of the application scope of the VDP to cover nontax-related noncompliance and other welcoming changes (e.g., the relaxation of timing requirement for reporting certain tax-related noncompliance), Bulletin 127 has made the program more appealing to, and accessible by, importers and exporters. The affected parties should consider taking the following actions:

- Conduct customs compliance reviews regularly to identify noncompliant activities, especially for those that must be reported in a timely manner to be eligible for the waiver of penalties;
- Assess the nature and eligibility for the VDP for noncompliant activities that have been identified, and voluntarily report them by applying for the program (if eligible);
- Establish and/or enhance the company's internal control program to improve customs compliance, focusing on the weaknesses and noncompliance identified through the regular review; and
- Seek professional assistance, where necessary.

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