

## Tax Analysis

### Guidance updates on customs voluntary disclosure

On 30 June 2022, the Chinese General Administration of Customs (GAC) published updated guidance (i.e., GAC Bulletin [2022] No. 54, or Bulletin 54) on the GAC's voluntary disclosure program (VDP), adjusting the penalty waiver thresholds for importers or exporters voluntarily reporting tax-related noncompliance. Bulletin 54 is effective as from 1 July 2022 and will expire on 31 December 2023.

The VDP was initially introduced into the Chinese customs regulations in 2016. The program allows Chinese customs authorities to reduce, mitigate, or waive administrative penalties on certain noncompliance relating to customs regulations, provided that importers or exporters voluntarily report such noncompliance in writing before it is discovered by the customs authorities.

#### Penalty waiver

According to Bulletin 54, administrative penalties for tax-related noncompliant activities that are reported voluntarily in the program will be waived in the following two situations:

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

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### *a. Adjustments to timing requirements*

In the first situation, Bulletin 54 relaxed the reporting timing requirement by extending the "three-month period" in the previous guidance to a "six-month period".

The timing requirement in the second situation also was adjusted by three months to six months. However, Bulletin 54 also introduced a new requirement in the second situation—that the noncompliance must be reported no later than one year after the activities occurred to qualify for the penalty waiver. The introduction of the requirement is apparently aimed at encouraging businesses to discover and report noncompliance as early as possible, and it may become more important than before to retain supporting documents to substantiate the date of noncompliant activities for businesses that wish to apply for the program.

In practice, it may not always be easy to determine the date the noncompliant activities occurred. One example would be that, where certain bonded goods were found missing for unknown reasons, the importer may have practical difficulty in determining which activities led to the goods going missing and when such activities occurred. Importers in this scenario may need to discuss and negotiate with the customs authorities to agree on certain alternative approaches to determine the date of noncompliance when applying for the program. Another example would be that an importer used an incorrect Harmonized System (HS) code for multiple imports of the same type of goods during a period of time. It has not been clarified whether such incorrect application of the HS code is considered as a single noncompliance activity or multiple noncompliant activities. The answer clearly has an impact on the application of the VDP. Affected businesses should monitor any further guidance in this area.

### *b. Other requirements*

Bulletin 54 also relaxed other requirements in the second situation for importers or exporters to access the benefits of a penalty waiver by increasing the ceiling ratio of any underpaid tax from 10% of the total tax payable in the previous guidance to 30%, and from RMB 500,000 in the ceiling amount of underpaid tax in the previous guidance to RMB 1 million.

### **Late payment surcharges reduction or waiver**

In addition to the penalty waiver, Bulletin 54 also provides that an importer or exporter in the aforementioned two situations may apply to the customs authorities for a reduction or waiver of late payment surcharges in relation to the underpaid tax.

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## Compliance records

According to Bulletin 54, where an importer or exporter is given a warning by the customs authorities or fined with an administrative penalty of less than RMB 1 million (which is increased from RMB 500,000 in the previous guidance) as a result of the voluntarily reported noncompliance, such warning or penalties will not be listed in the importer or exporter's customs compliance records.

The Chinese customs authorities have adopted categorized measures for customs administration purposes based on an enterprise's compliance status. Qualifying enterprises with sound compliance records may be recognized as "advanced certified enterprises" and benefit from expedited government services and a lower customs inspection rate, and noncompliance records may lead to the disqualification of the status of "advanced certified enterprise". Businesses may be able to avoid this negative impact by applying for the VDP.

## Tax-related noncompliance

After Bulletin 54 was published, the GAC further released some interpretative notes on its social media platform, providing that the "tax-related noncompliance" in Bulletin 54 includes not only the noncompliant activities resulting in underpayment of any customs duty or import tax, but also those having an impact on the refund of value added tax (VAT) or consumption tax for goods exports.

Unlike customs duties and import taxes that are administered and collected by the Chinese customs authorities, VAT and consumption tax related to the exports of goods are administered by the Chinese tax authorities. Therefore, before the interpretative notes were released, one may have doubted whether Bulletin 54 would apply to certain activities that would be noncompliant with customs regulations that have no impact at all on the tax revenue collected by the Chinese customs authorities (e.g., using incorrect HS codes for exports of goods resulting in the application of an incorrect export tax refund rate).

## Comments

Bulletin 54 generally relaxed certain requirements for businesses to access the benefits (notably the penalty waiver) offered by the VDP. However, it also introduced a new requirement so that noncompliance has to be reported within one year from when the relevant activities occurred to secure the penalty waiver. Therefore, affected businesses should regularly conduct self-reviews (e.g., on a quarterly or half-yearly basis) to enable them to discover and report noncompliance as early as possible.

Where a business has already submitted a VDP report involving noncompliance that occurred more than one year ago, and the report was still being reviewed by the customs authorities when Bulletin 54 became effective, Bulletin 54 is silent about whether the new guidance should be applied. As such, the business may need to consult with the customs authorities on such transitional issues.

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