

CAO 01-2019: New BOC Audit Rules

Customs Administrative Order (CAO) No. 01-2019 provides for the guidelines of the Post Clearance Audit (PCA) and Prior Disclosure Program (PDP).

It has been signed by the Department of Finance (DOF) Secretary last January 9, 2019 and took effect on February 15.

Hereunder are the salient features of CAO 01-2019:

- The Post Clearance Audit Group (PCAG), which is directly under the supervision of the BOC Commissioner, is headed by a BOC Assistant Commissioner who shall exercise direct supervision and control over the management of its operating units, which include the Trade and Information and Risk Analysis Office (which recommends to the BOC Commissioner potential priority audit candidates) and the Compliance Assessment Office (which conducts the actual audit).
- The PCAG is mandated to conduct an audit examination, inspection, verification and investigation of records pertaining to any goods declaration generally within three (3) years from the date of final payment of duties and taxes or customs clearance.
- The importers targeted for PCA are selected based on a “computer-aided risk management system” that takes into consideration the highest level of risk to (and the greatest impact upon) customs revenue and other priority objectives of the administration. The selection criteria are based on, but not limited, to the following:
 - Relative magnitude of customs revenue from the firm;
 - The rates of duties of the firm’s imports;
 - The compliance track record of the firm;
 - An assessment of the risk to revenue of the firm’s import activities;
 - The compliance level of trade sector; and
 - Non-renewal of an importer’s customs accreditation
- Once selected for PCA by the BOC, the audit process will be triggered by the issuance of a BOC Audit Notification Letter (ANL) sent to the importer-auditee through the following modes a) by personal service, b) by registered mail; or c) through electronic notice.
- The coverage of the compliance audit is 3 years (10 years in case of fraud) from the date of the ANL counted backwards.

Record Keeping Requirements

- All importers are required to keep, generally within a period of 3 years, all records at their principal place of business all the records of their importations and/or books of accounts, business and/or computer systems and all other customs commercial data, including payment records relevant for the verification of the accuracy declaration made by the importers/customs brokers on the goods declaration.
- Customs brokers are likewise required to keep copies of the importation records covering transactions that they handle.

Penalties imposable during PCA

- Any importer who, after being subjected to compliance audit, is found to have incurred deficiencies in duties and taxes paid for imported goods, shall be penalized (administrative fine) according to 2 degrees of culpability, namely:
 - Negligence - The applicable penalty is an administrative fine of 125% of the revenue loss. In case of inadvertent error, 25% of the revenue loss.
 - Fraud - The applicable penalty is an administrative fine equivalent to six (6) times the revenue loss and/or imprisonment of not less than 2 years, but not more than 8 years.
- Aside from the above administrative fine, a 20% interest (per annum) on deficiency duties, taxes and other charges (plus fines and penalties, if any) shall be imposed counted from the date of final assessment.
- For failure to keep the required records of importation, the penalties are as follows:
 - Suspension or cancellation of accreditation as Importer (or Broker) with the BOC;
 - Surcharge of twenty percent (20%) on the dutiable value of the goods which is the subject of the importation for which no records were kept and maintained;
 - Hold delivery or release of subsequent imported articles to answer for the fine and any revised assessment;
 - Criminal prosecution punishable with imprisonment of not less than three (3) years and one (1) day but not more than six (6) years, and/or a fine of one million pesos (PhP1,000,000.00); and
 - Waiver of the right to contest the results of the audit based on records kept by the Bureau.

Prior Disclosure Program (PDP)

- Under the CMTA, the BOC Commissioner, subject to the approval of the DOF Secretary, may compromise any administrative case involving the imposition of fines and surcharges, including those arising from the conduct of a post clearance audit. This contemplates a prior disclosure reported by importers arising from plain errors or innocent mistakes in the goods declaration resulting to deficiency in duties, taxes and other charges on past importations.
- Excluded from the PDP coverage are cases a) already pending with any other customs office, b) already filed and pending in courts; and c) goods declaration involving Fraud.
- Benefits of an approved PDP availment are as follows:
 - For PD availment prior to receipt of ANL
 - Payment of basic deficiency duties and taxes due
 - Plus, legal interest
 - For PD availment after receipt of ANL
 - Payment of basic deficiency duties and taxes due
 - Plus, a reduced penalty of 10% of the basic deficiency and
 - Legal interest
 - For PD availment on a) Royalties, and b) other proceeds on any subsequent resale that accrues directly or indirectly to the seller of goods or c) any subsequent adjustment to the price paid or payable to the seller
 - Payment of basic deficiency duties and taxes due without penalty and interest, provided, the applicant files for PDP within 30 days from date of payment or accrual of subsequent proceeds to the seller or from the date the adjustment to the price paid or payable is made.
 - If after 30 days, the 10% (with ANL) rate shall apply.