

# Tax Bulletin

Special Issue on the Customs  
Modernization and Tariff Act



# Highlights

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CAO No. 1-2019 implements Sections 1000 to 1006 of the Customs Modernization and Tariff Act (“CMTA”) on post clearance audit by the Bureau of Customs (“BOC”) and other related provisions. It also introduces the Prior Disclosure Program (“PDP”) as a compliance and revenue measure.

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## **Customs Administrative Order (CAO) No. 01-2019 dated 9 January 2019**

- ▶ The CAO’s main objective is to outline the principles, purposes and methodology of the post clearance audit system and recordkeeping requirement, and provide for a non-punitive facility for voluntary disclosure and payment of deficiency duties, taxes and other charges to promote compliance with customs laws and regulations.
- ▶ The post clearance audit function shall be exercised by the Post Clearance Audit Group (“PCAG”) of the BOC. The PCAG is headed by an Assistant Commissioner who directly supervises and controls the following operating units:
  1. Trade Information and Risk Analysis Office (“PCAG-TIRAO”)
  2. Compliance Assessment Office (“PCAG-CAO”)
- ▶ Importers subject to a Post Clearance Audit (“PCA”) include:
  1. Importer of record or consignee, owner or declarant, or party who or knowingly causes the importation of goods to the Philippines or withdrawal of admitted goods from the Free Zone, or the filing a claim for refund or drawback, or the transporting or storing of imported goods;
  2. A person ordering imported goods from a local importer or supplier in a domestic transaction if such person controls the material terms and conditions of the importation, is related to the supplier and may be considered as the beneficial or true owner of the imported goods, or furnishes the importer or the exporter with technical data, molds, equipment, other production assistance, material, components, or parts with knowledge that these will be used in the manufacture or production of imported goods or the goods to be imported;
  3. A person whose activities require the filing of a goods declaration; or
  4. An agent of the importer.
- ▶ In the absence of fraud, the BOC has three years from the date of final payment of duties and taxes or customs clearance, as the case may be, to conduct a post clearance audit and determine deficiency duties, taxes and other charges, including any fine or penalty, for which an importer may be liable.
- ▶ **PCA Process**
  1. **Profiling/Information Analysis**
    - ▶ Importers that will be subjected to PCA shall be selected based on any of, but not limited to, the following criteria:
      - a. Relative magnitude of customs revenue to be generated from the firm;
      - b. The rates of duties of the firm’s imports;
      - c. The compliance track records of the firm;

- d. As assessment of the risk to revenue of the firm's import activities;
  - e. The compliance level of a trade sector; and
  - f. Non-renewal of an importer's customs accreditation.
- ▶ Customs brokers and importer's duly authorized agents may be audited to validate information provided by their importer clients and fill information gaps revealed during the audit.
2. **Issuance of the Audit Notification Letter ("ANL")** - The ANL, which contains the names of the authorized personnel to perform the audit, shall be issued by the Commissioner. The ANL shall be valid for 30 calendar days subject to revalidation for another 30 days. This is served to the importer personally, by registered mail, or through electronic notice.
  3. **Preparation of the audit plan** - The audit team shall prepare an audit plan to fit the circumstances of the importer in line with the specific audit objectives.
  4. **Conduct of audit proper** - The conduct of the audit should commence within 60 calendar days and should be completed within 120 calendar days per year of audit from the service of the ANL.

Upon completion of the audit, the team shall issue either a Final Audit Report ("FAR") with demand letter, if there are findings of deficiency duties, taxes and other charges, or a PCAG-Clean Report of Findings ("PCAG-CRF"), if there are no findings, which shall be endorsed by the Assistant Commissioner, and approved and signed by the Commissioner.

If the audit is not yet completed, the audit team, within 5 days before the expiration of the period to conduct the audit, may request for an additional period of not more than 30 calendar days by submitting the request to the Commissioner through the Assistant Commissioner.

5. **Service of demand letter** - If the audit results in findings of deficiency duties, taxes and other charges, the demand letter signed by the Commissioner shall be served to the importer personally, through registered mail or electronic notice within 5 calendar days from the receipt of the PCAG. Payment should be made by the importer within 15 days from the receipt of the demand letter.
6. The BOC shall issue an acknowledgement letter with a statement that the audit is completed if the importer opts to pay the amount per the demand letter.
7. However, if the importer wishes to contest the audit findings, the following remedies shall be available:
  - ▶ Importer may file a request for reconsideration or reinvestigation with the Commissioner within 15 days from receipt of the demand letter. In case of a request for reinvestigation, the importer has 30 days from the submission of the request for reinvestigation to submit all relevant supporting documents. This will be resolved by the PCAG within 60 calendar days from the submission of the complete documents.

- ▶ If the request for reconsideration or reinvestigation is denied by the Commissioner, the importer may appeal to the Court of Tax Appeals within 30 days from the receipt of the denial.
- 8. The results of the audit shall be furnished to the Department of Finance (DOF) and the BIR within 30 calendar days from its issuance (including the amount paid by the importer). The PCAG shall provide to the DOF a quarterly status report regarding the ANLs issued and conducted.
- ▶ The BOC may exercise the following powers during the conduct of the PCA:
  1. Full and free access to records from the importer, customs brokers, and importer's duly authorized agents. This may include access to records showing the importer's document flow, financial flow, goods inventory, and other business processes necessary or relevant in determining the adequacy and integrity of the manual or electronic system maintained by the importer and compliance with the Customs laws, rules and regulations.
  2. Authority to obtain information relevant to the conduct of PCA from parties directly or indirectly involved in the importation or exportation activities of the importer subject of the PCA, including banks and other financial institutions.
  3. Power to summon importers, or any other relevant persons to produce books, papers, records, or other data, and to give testimony.
- ▶ **Prior Disclosure Program ("PDP")**
  1. Consistent with the international best customs practices, CAO No. 1-2019 introduced the PDP wherein the Commissioner is authorized to accept prior disclosure of errors and omissions in goods declaration resulting in payment of deficiency duties and taxes.
  2. PDP shall not be available for goods declarations which are the subject of pending cases with any other customs office, covered by cases already filed and pending in courts, or involve fraud.
  3. The benefits of a PDP include:
    - ▶ Payment of deficiency duties and taxes plus 20% interest per annum only if applied by an importer who has not yet received an ANL.
    - ▶ Payment of deficiency duties and taxes, reduced penalty of 10% and 20% interest per annum if applied by the importer within 90 calendar days from the receipt of the ANL. The PDP application may be amended within 30 calendar days from its filing.
    - ▶ An importer may avail of the of the PDP without payment of penalty and interest if the importer discloses additional duties and taxes arising from (1) royalties, (2) other proceeds of any subsequent resale, disposal, or use of the imported goods that accrues directly or indirectly to the seller, or (3) on any subsequent adjustment to the price paid or payable. PDP application should be filed within 30 calendar days from the date of payment or accrual of subsequent proceeds to the seller or from date of the adjustment to the price paid or payable is made.

▶ **Record Keeping Requirement**

1. Importers, customs brokers and other parties engaged in the customs clearance, and locators are required to keep all records pertaining to the ordinary course of business and importations of said parties at their principal place of business for a period of 3 years from the date of final payment of duties and taxes, or customs clearance, whichever is later, as the case may be.
2. The BOC also requires the keeping of records which contain the entity's organization and structure (i.e., articles of incorporation, articles of partnership, general information sheet) and relates to the operation and importation activities (i.e., documents on orders and purchases, shipping, importation, exportation and transport, manufacture, stock and resale, financial statements and books of account), among others.
3. Documents written in a foreign language, if presented to a customs officer in relation to carrying out any of its duties or the exercise of any powers of the BOC, shall be accompanied with a translation in English, certified correct under oath by a translator accredited by the Department of Foreign Affairs or by the relevant foreign embassy, or consular office.
4. An authorized customs officer may also require the importer and customs broker to submit certified copies of any documents or extracts thereof.

▶ **Penalties**

1. The applicable penalties for failure to keep records include:
  - ▶ Suspension or cancellation of accreditation as importer or broker;
  - ▶ Surcharge of 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 importer articles to answer for the fine and any revised assessment;
  - ▶ Criminal prosecution punishable with imprisonment of not less than 3 years and one day but not more than 6 years, and/or a fine of Php1,000,000; and
  - ▶ Waiver of the right to contest the results of the audit based on records kept by the BOC.
2. The applicable penalties for failure or refusal to give full and free access include:
  - ▶ Suspension or cancellation of accreditation as importer or broker;
  - ▶ Punishment for contempt, for contumacy or for refusal to provide access, from the proper court having criminal jurisdiction over the matter;

- ▶ Reassessment of the importations subject of the audit, the declared transaction value being presumed inaccurate applying therein the correct valuation method, tariff classification, quantity and/or country of origin, as applicable, based on available data.
  - ▶ Surcharge of 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 importer articles to answer for the fine and any revised assessment; and
  - ▶ Criminal prosecution punishable with imprisonment of not less than 3 years and one day but not more than 6 years, and/or a fine of Php 1,000,000;
3. The applicable penalties for failure to pay correct duties and taxes on imported goods determined through the conduct of PCA will be based according to 2 degrees of culpability below, subject to any available mitigating, aggravating or other extraordinary factors:
- ▶ 125% of the revenue loss in case of negligence. In case of inadvertent error amounting to simple negligence, penalty of 25% shall be applicable.
  - ▶ 600% of the revenue loss and/or imprisonment of not less than 2 years but not more than 8 years in case of fraud.
4. An interest of 20% percent per annum, counted from the date of final assessment, shall be imposed on the amount paid through PDP avilment, deficiency duties, taxes and other charges, and fine or penalty, if any.

▶ **BOC Remedies/Turn Over of Files**

1. The BOC has the following remedies for the collection of import duties, taxes, fees, or charges resulting from the conduct of a post clearance audit:
- ▶ Distraint of goods, chattels or effects and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts and interest in and rights to personal property.
- The Commissioner may place under constructive distraint the property of a delinquent importer who, in the opinion of the Commissioner, is retiring from any business subject to duty and tax, or is intending to leave the Philippines, or to remove the property therefrom, or to hide or conceal the property, or to perform any act tending to obstruct the proceedings for collecting the duty and tax due or which may be due.
- ▶ Levy upon real property and interest in rights to real property.
  - ▶ Civil or criminal action.
  - ▶ Remedies of distraint or levy shall not be allowed when the amount of duties and taxes, excluding interest and penalties, involved is not more than Php 10,000.
2. The DOF Financial Analytics and intelligence units are required to turn over all files and documents including any pending PCA to the BOC-PCAG.

*(Editor's note: CAO No. 1-2019 became effective on 15 February 2019)*

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The BOC issued a 10-Point Priority Program to strengthen and assist The Bureau in achieving their operation targets for the year 2019.

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### **Bureau of Customs 10-Point Priority Program**

- ▶ Enhancement of the Bureau of Customs Information Technology System - Fully automated system will be implemented to improve processes and minimize discretion on the part of the BOC officers reducing opportunity for corruption.
- ▶ Filling up vacant plantilla positions - To ensure that quality of service, the BOC is committed to fill all vacant positions with a target of at least 1,000 newly hired BOC employees in 2019.
- ▶ Provision of incentives for BOC employees - Promotions and reward will be given to motivate people to improve their performances.
- ▶ Restructuring of BOC organization - New offices and positions will be created and upgraded to avoid redundant and overlapping functions, while some offices and positions will be abolished or merged for optimal efficiency. This is to effectively carry out the three main functions of the CMTA which is revenue collection, trade facilitation and border protection.
- ▶ Enhancement of BOC facilities - Providing upgraded facilities and a work-friendly environment through construction, renovation and refurbishment of buildings and offices and enhancing the security of the facilities will improve the output for its employees and stakeholders.
- ▶ Enhancement of cargo clearance and examination capabilities - An enhanced and intensified examination system will be implemented to strengthen risk management system, post clearance audit and assessment functions. This is also to boost compliance with its commitment to the World Customs Organizations to implement the Authorized Economic Operator Program.
- ▶ Enhancement of intelligence and enforcement capabilities - Customs police force will be reorganized and strengthened to enhance intelligence and enforcement capabilities to ensure that the Bureau will contribute to the Philippines' boarder security and economic development.
- ▶ Codification and harmonization of implementing rules and regulations, customs administrative orders and customs memorandum orders - To provide clear and accessible guidelines to all concerned importers/taxpayers, the BOC will codify and harmonize all of its implementing rules and regulations such as Customs Administrative Orders and Customs Memorandum Order.
- ▶ Creation of a Quality Management System & Integrity System - BOC will align all offices with the ISO 9001:2015 Quality Management System to continue providing quality service and would implement a Customs Integrity Program.
- ▶ Pursue the passage of customs-related legislative measures - BOC will pursue proper administrative-related laws which will innovate the customs organization and development of the BOC.

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