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Alert on the amendments in the Customs Code of the Republic of Kazakhstan

In January of this year a number of amendments was introduced into the Code of the Republic of Kazakhstan 'On customs regulation in the Republic of Kazakhstan' (hereinafter – the '**Customs Code**'). The most important of them were brought into effect from 16 January 2021. Please see below the detailed information on the introduced amendments.

1. Preliminary decisions on classification of goods.

In order to optimise the state service 'preliminary decisions on classification of goods', the deadlines for the issue of the decisions were reduced as follows:

- ▶ the general deadline was reduced from 20 to 10 business days
- ▶ from the date when the application was registered with the customs authorities;
- ▶ in respect of the 'repeated' preliminary decisions on classification of goods, the decision shall be adopted not later than 5 business days
- ▶ from the date when the application was registered with the customs authorities;
- ▶ in respect of the disassembled goods, the deadline was reduced from 30 to 20 business days
- ▶ from the date when the application was registered with the customs authorities.

2. Deadlines for offset and refund of the amounts of the customs duties, fees, taxes, late payment interest and interest.

The deadlines for offset and refund of the amounts of the customs duties, fees, taxes, late payment interest and interest were reduced from 10 to 5 business days in the following cases:

- ▶ if the amount was paid and (or) charged in excess, it may be offset or refunded by the customs authorities within 5 business days from the date when the application was registered with the customs authorities;
- ▶ if the amount was paid by mistake, it may be offset or refunded within 5 business days either from the date when the application of the taxpayer or the bank was registered or from the date when the erroneously paid amount was received;
- ▶ if the results of the electronic auction were annulled on the basis of the effective decision of the court, the paid amount shall be refunded within 5 business days from the date when the taxpayer's refund application was received.

3. Deadlines for debt repayment notifications.

The deadlines for the notifications on repayment of debt on the customs payments, taxes, special, antidumping, countervailing duties, late payment interest and interest were changed.

The notification shall be sent to the taxpayer not later than 5 business days from the date of:

- ▶ expiration of the deadline on execution of the audit results notification;
- ▶ expiration of the deadline on execution of the notification on elimination of violations revealed on the basis of the in-house

customs audit results;

- ▶ expiration of the deadline on execution of the notification on the unduly paid amounts of the customs duties, taxes, special, antidumping, countervailing duties, late payment interest and interest;
- ▶ notification of the taxpayer on the results of consideration of the appeal against the notification on the audit results and the notification on elimination of violations.

The previous wording of the Article 117 of the Customs Code provided for 15 business days debt repayment notification.

4. Bank arrestment.

A list of grounds for the bank arrestment was compiled, in particular, the order can be issued in the following cases:

- ▶ failure to repay the debt on the customs payments, taxes, special, antidumping, countervailing duties, late payment interest and interest – within 10 business days from the date when the debt repayment notification was handed;
- ▶ failure to execute the notification on elimination of violations – within 5 business days from the date when the deadline for the notification execution has expired;
- ▶ unjustified denial of access of the customs authorities officers to the on-site customs audit objects – within 5 business days from the date when the protocol on the access denial was issued;
- ▶ postal return of the act of the on-site customs audit, the notification on elimination of violations, the notification on the audit results etc. due to absence of the audited person at his location – within 5 business days from the return date.

The exhaustive list of the grounds for the bank arrestment definitely minimises the risks for the business as well as limits the customs authorities in their application of the arrestment as the ‘effective method’ of the influence on business.

5. The procedure for the intellectual property objects registration in the customs register.

Pursuant to the adopted amendments, for the purposes of the intellectual property objects registration in the customs register, the applicant is no longer required to prove that the goods were transported across the customs border in violation of the intellectual property rights. In other words, in order to register the intellectual property object in the customs register, the copyright holder is not obliged to prove that his rights were violated on the territory of Kazakhstan and provide decisions of the court or resolutions of other authorities.

6. Conditions for registration and de-registration of the persons operating in the area of the customs affairs.

An additional condition was introduced for the purposes of registration of the persons operating in the area of the customs affairs.

In particular, the outstanding conviction of the legal entity’s director under the certain Articles of the Criminal Code regarding the economic violations, the violations against the public safety and order, the bribery against the civil service interests serves as the ground for refusal in registration of the legal entity in the register of the customs representatives, customs expeditors, owners of the temporary storage warehouses and duty-free markets. Moreover, the effective court decision on the criminal liability of the legal entity’s director in respect of the above violations serves as the ground for de-registration from the register of the persons operating in the area of the customs affairs.

7. Registration of the persons in the authorised economic operators register.

Pursuant to the introduced amendments, the list of conditions for registration of the legal entity in the register of the authorised economic operators was complemented.

In particular, the list of the Articles which provide for administrative liability of the legal entity which prevents registration in the authorised economic operators register was expanded. Moreover, the list of the Articles on criminal violations of such individuals as shareholders, founders (participants), directors and chief accountants of the legal entity which prevent registration in the authorised economic operators register was complemented.

The legal entity, applying for the first type certificate (which simplifies transportation procedure), is now obliged to own not less than 5 transportation vehicles suitable for transportation of goods under the customs seals.

In addition, for the purposes of registration in the authorised economic operators register, the legal entity shall comply with the established tax burden ratio for the last 3 years.

8. Changes in customs audit performance.

For the first time, it is envisaged that, upon violation of the audit performance procedure, it is possible to recognise the performed customs audit as invalid. In particular, the grounds for annulment of the audit act and the audit results notification are as follows:

- ▶ violation of audit deadlines;
- ▶ failure to send to or hand in the preliminary customs audit act to the audited person;
- ▶ customs audit completion prior to expiration of the deadline for provision of documents set by the customs authorities.

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