

Customs & Trade in Israel

A Legal Newsletter

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Do's and Don'ts - Advanced Preparation for the Launch of the "Global Gate" New IT System

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Much has been said on the new "Global Gate" system of the Tax Authority, mostly related to the operational aspect of the system - how will the broadcasts be performed by the commerce community, what is a smart card and a digital signature, how documents may be saved, and more.

But alongside the operational discussion, which is important within itself, there must be a public debate regarding the impact of the system upon the importers, both from a legal perspective and an enforcement perspective. In other words, will the launch of the new system and the related legislative amendments lead to new legal obligations for the importers? Will the Tax Authority employ new, diverse enforcement tools?

The following article will provide a few insights into the subject.

1. Increased enforcement by the Customs Authority towards importers: the subject of increased enforcement was raised publicly by the Tax Authority during the initial stages of establishing the system. Several indicators pointed to the matter in relation to both the system itself and the related amendments which are expected to soon come into effect.

The most obvious example is the transition to scanned digital documents. This is, in effect, the first time the Customs Authority will possess a comprehensive, accessible, digital database, which will allow the Customs Authority to more easily fulfill its legal obligation and enforce the law. If the Customs Authority previously needed to order files from its archives in order to examine the conduct of an importer (a cumbersome, time consuming process), now it can access all related files with a single click by using the "Global Gate" system.

Another indication is the fact that the annual importer declaration has now become a digital document. While content-wise the form remains unchanged, with the same questions appearing in the digital form, the digital submission in and of itself is a game changer in terms the Customs Authority's ability to cross reference information and improve enforcement.

An additional matter is that with a digital database which clearly characterizes each supplier, the Tax Authority now has a (previously inaccessible) broad overview of the supplier.

2. The significance of increased Customs Authority VAT enforcement: an accurate report is important in and of itself, as an inaccurate VAT report leads down the slippery slope of inaccurate customs and purchase tax reports, as well as affecting the accuracy of the State's foreign trade statistics.

In addition, when the Tax Authority issues a retroactive VAT (or other import tax) deficit, it charges a non-deductable interest and linkage fee (4%), as well as late charges (12.5-25% a year), resulting in a significant expense for the importer. In addition, under the current draft of the proposed legislation, the monetary fine will apply for inaccurate VAT and customs reports even if the product is only subject to import VAT.

3. The impact of decreased import tax on Customs Authority enforcement: the decrease of taxes doubtlessly reduced the indirect tax base collected by the Tax Authority, though the Tax Authority still retains a broad collection base. This is especially true for products whose customs duty rates were not reduced, and it can be logically assumed that the enforcement in such cases will remain unchanged.

It should be noted that the import register includes VAT as well, which is also collected by the Customs Authority. as there is no change in VAT matters, it can be assumed that its collection by the Customs Authority will remain unchanged as well.

4. Matters which will see increased enforcement by the Customs Authority: it appears that the subject of valuation for customs purposes will become a significant priority, and has already received increased attention within the framework of tax positions which require reporting. This means (to our assessment) that the Customs Authority will examine declared valuation by importers in the import register more thoroughly in order to determine whether the importer refrained from including values which should have been included, such as religious supervision ('Kashrut'), mould costs, royalties, various tools provided by the importer for free or for a reduced rate, and more.

It is important to note that in many cases these are orders under the Customs Ordinance or court rulings, not administrative guidelines of the Customs Authority. In other words, these are the provisions of the law, no less, and the Tax Authority will fulfill its legal obligations. Another subject is the monitoring of discounts given to the importer. The Customs Authority already examines these discounts, and does not officially recognize some of them. Following the establishment of the digital database and the ease of access to file details, it can be assumed that the Customs Authority will tighten its scrutiny of discounts in the suppliers account and check if such discounts are recognized. The Customs Authority has lately begun examining transfer prices for customs and VAT purposes as well.

Financial sanctions are another matter, and they are subject to extensive legislation. The Knesset (the Israeli Parliament) is currently contemplating a government bill for the

amendment of the Customs Ordinance. The bill will legally consolidate the changes required by the 'Global Gate' system, as well as other import matters.

One of these other matters is the financial sanctions subject. An importer which fails to attach the required forms to the import declaration (such as the supplier's account, packaging specification, bill of lading, insurance account, shipping charge account and other documents), or provides inaccurate details, will be exposed to financial sanctions (similar to a civil fine) amounting to 5,000 ILS or 10% of the missing import tax, whichever is higher. This will be subject to the discretion of the Customs Authority.

If the importer repeats the offense within a two year period, he will be subject to a double fine.

The subject of financial sanctions is new to the import field, while it already existed in other legislation, such as the Standards Law, the Consumer Protection Law, the Public Health Protection (Food) Law and the new cosmetics reform. Previously, the Tax Authority's enforcement arsenal included filing indictments (including investigations under caution) and forfeiture of goods. The financial sanctions tool provides the Tax Authority with an intermediate enforcement tool.

If use of financial sanctions by the Tax Authority becomes common, it would constitute a significant enforcement increase from the current state. On the other, if the Tax Authority employs financial sanctions in a moderate and proportionate manner as a substitute for stricter enforcement measures (such as indictment and forfeiture), it may be a positive development.

One can assume that increased enforcement may be expressed in other matters as well, such as the verification of preference documents, which is expected to continue on a large scale. This refers to the Customs Authority exercising its legal right to send preference documents abroad for verification, either to foreign Customs Authorities (in the case of Turkish or European movement certificates, for example) or to foreign suppliers (in the case of American certificates of origin), in order to examine whether the importer was indeed entitled to the tax benefits he received due to the document.

The lateral classification of goods by the Customs Authority will also be streamlined, as once the Customs Authority reaches a final classification in one case, it could easily perform a lateral examination among other importers, due to the existence of the digital database.

It should be noted that when the Customs Authority issues retroactive tax assessments, it charges an interest and linkage fee (4%), as well as late charges (12.5-25% a year), resulting in significant sums.

5. Digital signature: one of the key characteristics of the 'Global Gate' system is the transition to a paperless work environment. This means that documents submitted to the Customs Authority will be scanned, and some will be digitally signed, so that no hard copies will be necessary - all documents and files will be managed digitally. From an operational perspective, importers must obtain a smart card with which they will transfer the documents to the customs agent.

6. The legal implications of the digital signature: there is certainly legal significance to the digital signature. The digital signature is not merely a formal confirmation of an authentic copy, as the importer uses it to digitally sign documents, thus attesting to the accuracy of the details presented within.

This is especially important with regard to the supplier account. When an importer digitally signs the supplier account, he is attesting to the accuracy of the details it lists - the quantity and price of the goods. Should the Customs Authority later discover that the supplier account was false or erroneous (for example, if the monetary values are inaccurate, the wrong quantities are listed, a page is missing, etc.), the Customs Authority may audit or even investigate not only the import company, but the signatory himself as well.

7. The significance of the digital signature for the signatory: the Customs Authority expects importers to take responsibility over the documents they submit, and not merely serve as couriers for the transfer of the documents to the customs agent for submission. While this was true in the past as well, now an individual person employed by the import company must personally sign the documents, thus placing personal liability upon a specific signatory.
8. Importer conduct regarding preference documents: preference documents - certificates of origin, EUR.1 movement certificates, invoice declarations etc. - are documents provided by the supplier or the Customs Authority of the exporting country. On the one hand, the importer does not possess any information regarding the accuracy of the details of the document, as he is unfamiliar with the composition of costs of the product he is acquiring or the manufacturing process it undergoes in the exporting country. In this regard, the importer is not expected to be responsible for the accuracy of the details. On the other hand, the importer is expected not to make use of or submit a preference document which appears inaccurate (such as a EUR.1 movement certificate for a product which was clearly manufactured in China and only packaged in Europe) until after he verified the details with the supplier.
9. Importer and import managers conduct in the same company: we would suggest that importers and import managers establish a proper procedure for digitally signing documents, including examination of detail accuracy, prior to approving and digitally signing the documents.
10. Preparation for 'Global Gate': it is important to understand that the essential legal provisions remain unchanged. In other words, the same customs principals remain intact for valuation for customs and VAT purposes, classification and rules of origin, but we expect a closer examination and control by the Customs Authority in light of the significant tool it will now possess.

Therefore, our first recommendation for importers would be to familiarize themselves with the provisions of the law and customs related rulings, especially regarding the matters presented above. In more specific terms, importers should familiarize themselves with valuation for

customs and VAT purposes matters, and carefully and accurately fill the importer declaration form, regardless of whether the goods are subject to customs, purchase tax and VAT or only VAT.

Another recommendation for importers is to implement a standard, written work procedure for filling an importer declaration, as well as for the loading of costs in import declarations. In addition, it is highly recommended that there are proper procedures set for digitally signing documents and ensuring that all documents were properly submitted to the Customs Authority. These procedures will first and foremost ensure that no mistakes were made throughout the import process, and will also serve to defend the company officials, who are responsible for ensuring that all reports to the Customs Authority were done properly and in accordance with the law.

The above review is a summary. The information presented is for informative purposes only, and does not constitute legal advice.

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