KÜFFNER MAUNZ LANGER ZUGMAIER

11 | 2016

KMLZ VAT NEWSLETTER

Companies need to be prepared for new Union Customs Code

The new Union Customs law entered into force on 01.05.2016, resulting in considerable changes. The Federal Ministry of Finance and the General Directorate of Customs have published implementation decrees on the application of the new Customs law. The decrees deal with the major legislative changes and transitional steps with regard to the existing authorizations and processes. As regards the practical implementation, many questions currently remain unanswered.

New Union Customs Code – new rules in force as of 01.05.2016

1. Background

The new customs law came into force on 01.05.2016. It is comprised of the following legal acts: the Union Customs Code (Regulation (EU) Nr. 952/2013 "UCC"), the Delegated Act (EU) 2015/2446, the Implementing Act (EU) 2015/2447 and the Transitional Delegated Act (EU) 2016/341. The latter was published in the Official Journal of the EU on 15.03.2016 (L69, page 1ff.). It regulates the applications of the UCC, DA and IA provisions until the required IT systems are in place by the end of 2020.

On 11.03.2016, the Federal Ministry of Finance published an Implementation Decree on the application of the new Union Customs law. The decree deals with the major legislative changes and transitional steps with regard to the existing authorisations and processes. On 02.05.2016, the General Directorate of Customs also published a decree regarding these questions.

2. Basic principles of the new Customs Law

One of the main objectives of the reform is to simplify customs clearance. The economic partners are to be given a heightened responsibility for compliance with customs requirements. Electronic exchange and electronic data storage will be the rule/be mandatory.

Significant changes

The deadline for temporary storage has been extended to 90 days. There is no provision for a further extension of the deadline in the individual case. Security will have to be provided for the temporary storage. The term exporter of record will now be defined by the legislation. The further amendments mainly relate to the restructuring of the customs procedures, implementation of a customs law administrative procedure, the law of obligation as well as the (alleged) further simplifications for authorised economic operators (AEO). The rules as regards binding tariff informations and individual issues regarding origin and customs value will also change. In the following, we will present the changes in more detail. The changes, as regards the customs debt law, will be dealt with in a separate newsletter.

3.1 Restructuring of the customs procedures

As of 01.05.2016, the following three customs procedures exist: release for free circulation, special procedures and export. The special procedures include: transit (external and internal), storage (customs warehousing and free zone), specific use (temporary admission and end-use) and processing (inward and outward processing as well as destruction of goods upon application). The hitherto (processing under customs control) will be included in the inward processing. The free zones control type II ("unfenced") will be eliminated. They can be retained upon application as a customs warehouse. The inward processing drawback procedure and the charging of compensatory interests will be abandoned. However, according to the Federal Ministry of Finance, the basic principles of the export procedure will remain the same. The term "exporter of record" will however be adjusted to the provisions of the foreign trade law. The exporter of record is, amongst other things, the person resident in the Union customs territory who is the contracting partner of the recipient in a third country at the time of acceptance of the declaration and who is authorised to decide on the movement of the goods outside the Union customs territory. Ownership is no longer decisive. Furthermore, the "approved exporter" will no longer exist within the frame of the present "local clearance procedure".

3.2 New administrative procedure

The UCC will also implement a new administrative procedure under customs law, which prevails over the national provisions. Applications for customs law decisions have to be decided upon within 30 days of their receipt. The decision, as regards the application itself, has to be issued within 120 days of receipt of the application, at the latest. This period may be extended by an additional 30 days. In cases where a decision would adversely affect the applicant, he shall have the right to be heard. The non-renewable period for filing an opinion is 30 days.

3.3 Binding tariff information

Future binding tariff information shall be binding not only on the customs authorities but also on the applicant, who is required to refer to the existing binding tariff information in his customs declaration. The period of validity is now three years instead of the hitherto six years. The duration of binding origin information is also three years from the date the binding origin information enters into force.

3.4 Authorised Economic Operator

An authorisation will be issued instead of a certificate as regards the status of Authorised Economic Operator. In future, only the AEO C (AEO Customs) and the AEO S (AEO Security and Safety) will exist. The third version, AEO F (AEO Full), will be dropped. Economic operators may, simultaneously, apply for both an AEO C and an AEO S. In this case, a combined authorisation will be granted. All AEOs must meet further requirements for obtaining authorisation, such as the absence of any serious infringement or repeated infringements of customs legislation and taxation rules, including no record of serious criminal offences relating to the economic activity of the applicant. This also applies to the applicant's employees who are responsible for these customs issues. In addition to the head of the customs division or the person in charge of customs, it concerns any employee who is involved in customs matters. In the future, there must also be a lack of serious infringement of taxation rules (including foreign trade law and excise duties). The AEO (and the person in charge of customs matters) must have available a practical or theoretical certificate of competence (at least three years experience or corresponding training). The AEO is required to nominate a responsible

Contact: Dr. Christian Salder
Lawyer, Certified tax consultant
Phone.: +49 (0) 89 / 217 50 12 - 85
christian.salder@kmlz.de

person to be the contact person for security matters. Being an AEO will now be required for the granting of procedural simplifications and benefits.

3.5 Origin and preferences

As regards the non-preferential origin, as well as the provisions governing the issue and review of supplier declarations, the authorisation for being an approved exporter will be omitted without replacement. Long-term supplier declarations may have a period of validity of up to two years as from the date they became effective. In future, such declarations may be issued retroactively for one year.

3.6 Customs value

The primary basis for the customs value continues to be the transaction value. The transaction value of goods sold to be exported to the Union customs territory will be determined at the time of receipt of the customs declaration, namely on the basis of the sale which occurred directly prior to the goods being brought into the customs territory. The possibility to take the so-called ”first sale rule” as a basis for customs valuation no longer exists. However, the first sale rule may still be applied until 31.12.2017 when the importer is bound to a sales contact made prior to 18.01.2016. Additionally, an agreement, as regards the respective first sale, has to be concluded between the supplier and the pre-acquirer prior to that date. The regulations as regards the inclusion of royalties will be tightened. As a rule, royalties are relevant to the future customs value. It is irrelevant, whether the seller claims payment of the royalties from the acquirer to the licensor.

4. Transitional and implementation measures

Authorisation and certificates, which are limited in time and were issued prior to 30.04.2016 will continue to be valid until their expiry dates lapse. The pre-existing authorisations will be reassessed by 01.05.2019. They continue to be valid until their reassessment has taken place. Binding tariff information, which has entered into force prior to 01.05.2016, will continue to be valid for the pre-determined period. They shall, however, also be binding on the holder. Decisions on the deferment of payment remain valid for an unlimited period unless a reassessment takes place.

The IT-procedure ATLAS continues to be the system used for customs clearance under the UCC. Until ATLAS has been adapted, the pre-existing issue of assessments procedure remains unchanged.

5. Tips for the practice

The new law applies to the adoption of the authorisations. The customs authorities will contact companies concerning reassessment. It is, however, advisable to commence review of pre-existing authorisations now so that adjustments can be made to all customs law related transactions. Furthermore, it has to be ascertained whether e.g. procedures previously used have ceased to exist or an authorisation for being an authorised economic operator is now required. Are IT-systems set up so as to indicate binding tariff information in the customs declarations when importing goods? Are supplier declarations to be reviewed or do agreements with suppliers have to be amended? Companies should deal with these questions as soon as possible in order to retain the power to act continue trading.