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Customs, Trade and Transport Law e-alert

Customs Compliance Focus for 2011 – 2012 and Voluntary Disclosure

Customs has recently used a series of seminars on its "2011/12 Compliance Focus" to stress that deliveries without authority are a major area of concern and will be a specific focus of increased compliance action. Customs also stressed the importance of voluntary disclosure of false or misleading statements that have previously been made to Customs.

In seminars held around the country, Craig Sommerville, the National Manager for Compliance Operations highlighted the following areas of concern:

- deliveries without authority;
- cargo control issues associated with major resource projects;
- cargo reporting timeliness and accuracy;
- goods of consumer safety concern;
- imported drug precursors;
- export of strategic goods;
- undervaluation of imported goods;
- incorrect luxury car tax payments; and
- low value threshold issues (SACs).

As mentioned earlier, a key focus of the seminar and a key focus for Customs Compliance action, will be on deliveries without authority. A delivery without authority occurs where goods are moved from a Customs controlled area, such as a bonded warehouse, prior to an authority to deal being issued by Customs. Moving goods without the authority of Customs, or simply not being able to account for goods that are subject to Customs control, is subject to a variety of responses by Customs including prosecutions for a fault based offence or a strict liability offence. A strict liability offence is one where a person can be guilty of the offence even if that person believed an authority to deal had been issued and there has been no intention to commit the offence. Customs also has the option of issuing an Infringement Notice where it believes a strict liability offence has been committed. The issue of Infringement Notices is governed by Guidelines issued by Customs.

Customs has stated that it will not tolerate movement of goods without authority as it compromises Customs' ability to monitor goods and the integrity of the borders. Customs is much more likely to issue a financial penalty, such as an Infringement Notice, in respect of deliveries without authority, than for other types of offences.

Mr Sommerville also emphasised the benefits of voluntary disclosure of false or misleading statements to Customs. It is an offence to make a false or misleading statement to Customs (regardless of whether the statement results in an underpayment of duty). However, no offence is committed in respect of the false statement if voluntary disclosure is made (subject to certain conditions governing how the voluntary disclosures are to be made). The types of incorrect statements that can inadvertently occur are incorrect tariff classification of goods, stating the incorrect value of imported goods, incorrectly declaring that goods are not prohibited goods, incorrectly claiming that the goods are covered by a free trade agreement or tariff concession order or incorrectly stating that the goods are not the subject of a related party transaction. An incorrect statement can result in an offence being committed, even if the incorrect statement was unintentional.

Our experience is that Customs responds very favourably to entities that voluntarily disclose incorrect statements. Mr Sommerville also said that past voluntarily disclosure is a factor taken into account in respect of future breaches where there has not been voluntary disclosure. A history of being voluntarily compliant will make it easier to convince Customs that any breaches of the law discovered by Customs were inadvertent and do not warrant a severe penalty.

Another comment made by Mr Sommerville was that Customs will be making greater use of Infringement Notices. Mr Sommerville stated that up until now Customs has taken a conservative approach in respect of issuing Infringement Notice and it will now be moving away from that position. Mr Sommerville made clear that Infringement Notices will not be reserved for deliberate misconduct and can be issued even when there was no intention to breach the law. A number of those in industry may consider that Infringement Notices are a minor matter, given that the level of penalties are relatively low. However, an Infringement Notice represents evidence that Customs believes there has been commission of an offence which could lead to heavier penalties and prosecution in the future and could also adversely affect those holding licences issued by Customs. As readers would be aware, one condition of most licences issued by Customs is that the licence holder is "fit and proper" and has not breached relevant legislation. It should be kept in mind that there are mechanisms to appeal the issue of an Infringement Notice.

Given Customs' stated approach, and Mr Sommerville's comments regarding voluntary disclosure, we strongly recommend that if you are aware of any possible breaches, including false statements or movement of goods without authority, you contact us to discuss the best way of disclosing those breaches to Customs. In most cases, voluntary disclosure will have the result that there has been no breach of the Customs Act. Even if this result is not achieved, voluntary disclosure will almost certainly result in a better outcome than if the breach is discovered by Customs.

Please contact us if you would like further information regarding Customs' compliance focus in 2011/12 or how to manage voluntary disclosure of any potential breaches of the Customs Act.

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