



Amended version of the Customs Code: changes as of 1 October 2009

Contact details

Moscow

Galina Dontsova

Tel: +7 (495) 755 9700

Email: Galina.Dontsova@ru.ey.com

St. Petersburg

Dmitry Mayorov

Tel: +7 (812) 703 7800

Email: Dmitry.K.Mayorov@ru.ey.com

The amended version of the Customs Code has come into force as of 1 October 2009, with the amendments being introduced by Federal Law No. 58-FZ "Concerning the Introduction of Amendments to the Customs Code of the Russian Federation" of 9 April 2009 and Federal Law No. 207-FZ "Concerning the Introduction of Amendments to the Customs Code of the Russian Federation" of 24 July 2009.

A part of the amendments was designed to eliminate the technical errors and internal inconsistencies which led to ambiguous interpretations of certain provisions of the Customs Code as well as contradictions between the Customs Code and the Tax Code. However, another part of the amendments substantially changes the provisions of the Customs Code with regard to the administration of customs payments, i.e. stringent rules are introduced for making and securing customs payments and greater powers are given to the customs authorities in enforcing the collection of customs payments.

The most important and substantial amendments are reviewed in this article.

Customs broker's liability

Pursuant to the Customs Code (Item 2 Article 144 and Item 1 Article 320) prior to the amendments, the customs broker bore the same liability for making customs payments as the declarer. The new version of the Code specifies that the customs broker bears *joint liability* with the declarer in the full amount of the customs payments to be made. Taking into account definition of a joint liability provided in the Civil Code (Article 323), new version means that the customs authority may demand that customs payments be made jointly by the declarer and the customs broker or separately by either of them. The new version of the Customs Code provides that, in the event of joint liability, the demands to make customs payments are issued to the declarer and the customs broker at the same time (Item 4¹ Article 348). The sequence of fulfillment of the demands is not regulated by the Customs Code, and therefore this issue should be settled by the declarer and the customs broker themselves to rule out the possibility of making customs payments in excess.

Moreover, the customs authority is entitled to enforce the collection of customs payments from both entities at the same time (Item 4¹ Article 348). When customs payments are recovered from the declarer as well as the customs broker, a certain part of the amount will be returned as an amount recovered in excess.

Making customs payments

Time limits for making customs payments. Amendments have been made to the provisions of the Customs Code (Article 329) relating to the time limits for paying customs duties and taxes (the matter in question is customs duty, VAT and excise duty). Earlier, the time limits were linked to the time of presentation of goods to the customs authority, i.e. 15 days starting from the day when the goods are presented to the customs authority at their destination (if the goods are declared at their destination) or 15 days

starting from the day when the internal customs transit procedure is completed.

Pursuant to the new version of the Customs Code, customs payments should be made no later than the day when the customs declaration is submitted. In the event of failure to submit the customs declaration by the deadline, the time limits for making customs payments are to be calculated from the day when the deadline for the submission of a customs declaration expires. The amended version also sets the time limits for making customs payments as well when a primary declaration is made, a periodic customs declaration is submitted, and goods are released before a customs declaration is submitted.

No amendments have been made to the provision of the Customs Code (Item 2 Article 132) whereby the failure to pay customs duties and taxes at the time of submission of the customs declaration is no grounds to refuse to accept the customs declaration. The time limits for paying customs clearance fees also remain unchanged, i.e. either before the submission of a customs declaration or at the same time with its submission (Article 35⁶).

Penalties. Item 5 of the Article 349. has been excluded from the Customs Code. Pursuant to it, penalties are not to be charged and paid during the temporary storage of goods when the time limits for submitting a customs declaration have expired while goods are in a temporary storage warehouse.

This could be treated in a way that if a customs declaration for temporarily stored goods is not submitted within the established time limits, penalties are to be charged as of the date of expiry of the time limits for the submission of a customs declaration. Generally, the time limits are not more than 15 days starting from the day when goods are presented to the customs authority at their destination (if they are declared at their destination) or 15 days starting from the day when the internal customs transit procedure is completed.

On the other hand, taking account of the substance of the temporary storage procedure, which does not envisage the payment of customs duties and taxes for temporarily stored goods prior to their release, the elimination of the sub-clause should not entail penalties in the above case.

Payers of customs payments. As of October 1, 2009, customs payments may be made only by the declarer and other entities which under the Customs Code are obligated to pay customs duties, taxes and fees (in particular, customs brokers). The provisions that any entity is entitled to pay customs duties, taxes and customs clearance fees (Item 2 Article 328 and Item 2 Article 357⁵) have been eliminated from the Customs Code. Incidentally, the elimination of these provisions does not prevent any entity from making customs payments through the customs brokers' accounts.

Currency of payment. All provisions saying that customs duties, taxes and fees may be paid and advance payments may be made in foreign currency have been eliminated from the Customs Code. Pursuant to the Customs Code, customs payments and advance payments are now to be made only in rubles (Item 2 Article 330 and Item 2 Article 331). It should be noted that according to the Customs Code earlier, customs payments could be made in foreign currency, but this has been ruled out in the last few years by federal laws on the federal budget for the relevant year.

Payment procedure. A new concept - the Federal Treasury account - has been introduced into the Customs Code. All customs duties, taxes, levies and advances are now paid only to the Federal Treasury's accounts. Customs payments may be made to a customs authority's cash office only for goods which are moved by individuals across the customs border for personal use. During the "transition period" from October 1, 2009 to June 30, 2010, a transition is to be performed, inter alia, in making customs and advance payments to the Federal Treasury's accounts.

Termination of the obligation to make customs

payments. The old version of the Customs Code (Article 319) envisaged the termination of the obligation to pay customs duties and taxes in instances envisaged by the Tax Code of the Russian Federation. Such grounds are now listed directly in the Customs Code. On the whole, they conform to similar grounds envisaged by the Tax Code.

However, there are distinctions. An interesting fact is that the Tax Code envisages the termination of the relevant obligation upon the liquidation of the taxpaying organization only after all settlements are made with the budgetary system of the Russian Federation, while under the Customs Code, the fact alone that an organization which pays customs duties and taxes is liquidated is enough to terminate its payment obligation. The amended version of the Customs Code, however, indicates that the termination of such an organization's obligation to pay customs duties and taxes does not entail the termination of the obligation to make such payments by an entity which bears joint responsibility with the aforesaid entity to pay customs duties and taxes (i.e. the customs broker).

Time limits for issuing a report on the expenditure of financial advances and for confirming the payment of customs duties and taxes. The time limits wherein a customs authority is obligated to issue a report on the expenditure of financial advances is not more than three years preceding the request for it (Item 4 Article 330). Confirmation of the payment of customs duties and taxes will be issued for a period of not more than three calendar years preceding the request (Item 5 Article 331). Such time limits were not established earlier.

Time limits for the recovery of advance payments. The time limits within which a request may be made for the recovery of advance payments have been increased. Earlier, advance payments were recovered if the request for their recovery was submitted within three years from the day on which they were made, while according to the amended version of the Code (Item 5 Article 330), a

request for the recovery may be made within three years from the day on which an entity gave the last instructions on the use of advance payments.

Security for the payment of customs duties and taxes

Entities entitled to provide security for payment. As of October 1, 2009, only the entity responsible for the payment of customs duties and taxes (Item 4 Article 337) may secure their payment. Earlier, they could be secured by any entity. This provision correlates with the provision that customs payments could be made only by the entities responsible for making them.

Monetary deposit. Like customs payments, monetary deposits are made as of October 1, 2009 only in rubles to the Federal Treasury's accounts.

Types of security. The amended version of the Customs Code rules out the possibility of using an insurance agreement as security for paying customs duties and taxes. Such a possibility was envisaged in the previous version of the Customs Code (Item 3 Article 340. and Article 347), but actually it was never used. The fact is that the instances for securing customs payments by an insurance agreement should be determined by the Ministry of Finance of the Russian Federation jointly with the Federal Customs Service of Russia, but this was not done.

General security. Pursuant to the Customs Code (Article 337), if the same entity performs several customs operations within a certain period of time, a customs authority may accept security for the payment of customs duties and taxes for all such operations (general security). Earlier, the customs authority was obligated to accept such general security, but as of October 1, 2009, this became its right.

Enforced collection of customs payments

Sources of enforced collection. The list of sources from which customs payments may be recovered has been enlarged. Until October 1, 2009, customs payments could be recovered

- from the monetary resources on the payer's bank accounts;
- from the payer's other assets;
- against the value of goods for which customs duties and taxes have not been paid, and
- by a legal process.

The enforced collection of customs payments can now be applied also to the security for making customs payments. The Customs Code has an additional article (Article 351¹) which regulates the specific features of the collection of customs payments against the security for making customs payments.

Specified demand for making customs payments. A new term, "specified demand for making customs payments" (Item 1 Article 350), has been introduced to the Customs Code. If the obligation to pay customs duties and taxes has changed after the demand to pay customs duties was made, the customs authorities shall send a specified demand to make customs payments while revoking the initial demand. The specified demand must be fulfilled within 10 workdays starting from the day of its receipt. This time limit is less than that for the fulfillment of the initial demand, which as we have seen is no less than 10 workdays and no more than 20 calendar days from the day of its receipt.

Currently, the situations involving a change in the obligation to pay customs duties and taxes and, consequently, the making of a specified demand are ambiguous.

Demand to make customs payments. According to the previous version of the Customs Code, the demand to make customs payments must be sent to the payer within 10 workdays from the day on which their non-payment or partial payment was discovered (Item 3 Article 350). This norm did not undergo any changes in the new version of the Code.

The Customs Code, however, enshrines additional grounds for sending the demand to make customs payments, i.e. the failure to meet the requirements and conditions of customs procedures (regimes), entailing the obligation to pay customs duties and taxes (e.g. when goods are not delivered to the customs point of destination or when goods which are temporarily imported are not exported within the prescribed time limits). The time limits for issuing the demand to make customs payments in the event of such grounds have been determined: one year from the day on which the violation was discovered (Item 3 Article 350). In this respect, the day of discovery of the violation is deemed to be the day on which an administrative offence protocol was drawn up or the day on which the time limits for a customs regime or a customs procedure expired if on that day an entity was to perform certain operations due to that expiry.

Earlier, such grounds were not singled out in the Customs Code. A general rule was applied to the failure to meet the requirements and conditions of customs procedures (regimes), i.e. a demand was sent to the payer to make customs payments within 10 workdays from the day of discovery of the fact that customs payments were not made at all or were incompletely made, and this gave rise to certain difficulties when the time limits were calculated.

Collecting customs payments without issuing a demand. Pursuant to the Customs Code, the enforced collection of customs duties and taxes is preceded by the issue of the demand by the customs authorities to pay customs duties and taxes. According to the previous version of the Customs Code, customs duties and taxes could be collected without issuing a demand only in exceptional cases, when collection is made against the goods in relation to which customs duties and taxes were not paid.

According to the amended version of the Code, enforced collection became possible *without the demand to make customs payments* in the following situations

- customs duties and taxes are collected from the guarantor under a bank guarantee or from the surety in the event that the customs authority did not establish the whereabouts of the person responsible for making customs payments or when the person responsible for making them is a foreigner (Item 2 Article 351¹);
- a collection is made against the amounts of a monetary deposit (Item 3 of Article 351¹) in the event that the obligations secured by the monetary deposit are not fulfilled, and
- a collection is made against the amounts of advance payments (Item 2 Article 353).

Pursuant to the amendments introduced in relation to the collection of the amounts of customs payments from the monetary deposit or advance payments, the customs authority is obliged to notify the payer in writing only after the collection is made (within one day after the collection is made), thereby concealing the enforced collection procedure from the person responsible for the payment.

The question of the instances when the enforced collection of customs payments without the demand to make customs payments may be deemed justified is left open in the Customs Code.

Statement by the customs authority. Pursuant to the amended version of the Customs Code, the discovery of the facts which serve as grounds for sending the demand to make customs payments should be entered in the statement drawn up by the customs authority (Item 3 Article 350). Earlier, such a document was not required. The statement should be drawn up within five workdays after the customs authority adopts a decision on the results of the customs oversight when violations entailing the obligation to make customs payments were discovered. The form of the statement and the procedure for drawing it up should be approved by the

Federal Customs Service of Russia; so far, however, they have not been approved.

Time limits for the adoption of a decision on collection. The amended version of the Customs Code increases the time limits for the customs authority to make the decision on the collection of customs payments against the monetary deposits on the payer's bank accounts (collection without a legal process). Earlier, the time limits were 30 days from the day of expiry of the payment deadline, but now they are 60 days (Item 2 Article 351).

Measures to ensure the collection of customs duties and taxes. The Customs Code now has provisions which are analogous to those of the Tax Code whereby, in order to ensure the collection of customs duties and taxes, the customs authorities may suspend operations on the bank accounts of the payers of customs duties and taxes (Article 351²) as well as seize the payer's property due to the customs payment debt (Article 351³). Earlier, unlike the tax authorities, the customs authorities had no such rights.

Article 351², a new article in the Customs Code, regulates the suspension of operations on the bank accounts of the payer of customs duties and taxes.

According to that article, the decision to suspend operations on bank accounts may be made by the customs authority if the payer does not fulfill the demand to make customs payments after the customs authority adopts the decision on collection without a legal process. The customs authority has one month from the day of its adoption of the decision on collection without a legal process to send a collection order to the bank for a write-off (Item 5 Article 351). Meanwhile the customs authority may hand over the decision to be sent to the bank on the suspension of operations, which is to be unquestionably fulfilled by the bank. The suspension of operations may be terminated only when the customs authority receives documents (their copies) confirming the fact that the customs duties and taxes have been recovered (not later than within one operative day).

The seizure of property by the customs authorities is regulated by Article 351³, which is a new article in the Customs Code. According to that article, the seizure is made when the payer fails to fulfill the obligations to make customs payments within the prescribed time limits and when the customs authorities have enough grounds to presume that the payer will take steps to go into hiding or conceal his property. Only the property which is enough to cover the obligation to pay customs duties, taxes and penalties may be seized. Property may be seized either fully or partially. When it is seized fully, the payer has no longer right to dispose of it, but it may be possessed and used with the permission and oversight of the customs authority. When property is seized partially, it may be possessed, used and disposed with the permission and oversight of the customs authority.

Refund of customs duties and taxes which have been paid or collected in excess

The Customs Code has a provision (Item 2 Article 355) whereby the amounts of customs duties and taxes which have been paid or collected in excess may be refunded on the basis of the application of not only the payer, but also his legal successor. The Code gives a list of documents which should be attached to the application for a refund of the customs duties and taxes which were paid or collected in excess.

The amended version of the Customs Code (Item 2 Article 355) provides that if the customs duties and taxes were paid by a person other than the payer, the refund may be made only with the written consent of the person who paid the duties and taxes. Since customs duties and taxes may be paid only by the relevant payers as of October 1, 2009, it seems that the Customs Code refers to situations which existed prior to October 1, 2009 with regard to the refund of customs duties and taxes paid by a person other than the relevant payer.

As of October 1, 2009, the customs duties and taxes paid or collected in excess may be refunded to the account of the payer (his legal successor) (Item 5 Article 355). Earlier, customs payments could be refunded to any account indicated in the refund application.

Re-importation customs regime

Pursuant to the Customs Code (Item 1.3 Article 235), one of the requirements for placing goods under a re-importation customs regime is that they should be in the same condition as that when they were exported. Only the changes which occurred as a result of natural wear or natural loss under normal conditions of transportation, storage and use (operation) are permissible. The amended version of the Code allows for only the changes which occurred as a result of natural loss under normal conditions of transportation, storage.

According to the Customs Code, the use of goods outside Russia to make profit is not regarded as an obstacle to the placement of goods under the re-importation customs regime. Such use inevitably entails the natural wear of goods, and it is quite logical to allow for changes as a result of natural wear.

The new provision of the Code may cast doubt on the possibility of applying the re-importation customs regime to equipment which was used outside Russia for production purposes and which underwent natural wear.

Exemption from the payment of customs clearance fees

The Customs Code (Article 357⁹) has amendments which specify and to a certain extent expand the list of instances when customs clearance fees should not be paid. For instance, goods whose overall customs value is not more than 5,000 rubles when exported outside the customs territory of the Russian Federation by one shipper within one week are exempt from customs clearance fees.