

2018 Issue No. 29
19 July 2018

Tax Alert – Canada

Duty relief, duty drawback, and remission available for Canadian surtaxes on certain US originating goods

EY Tax Alerts cover significant tax news, developments and changes in legislation that affect Canadian businesses. They act as technical summaries to keep you on top of the latest tax issues. For more information, please contact your EY advisor or EY Law advisor.

EY has confirmed that importers can take advantage of the Duties Relief Program and/or Duty Drawback Program to defer or obtain a refund of the recent surtax imposed under the United States Surtax Order (Steel and Aluminum) (SOR/2018-152) and the United States Surtax Order (Other Goods) (SOR/2018-153) for imported goods that are re-exported or are used as inputs or consumed in producing other goods for export. In addition, the federal government has announced a remission program to relieve unfair applications of the surtax or hardship in limited circumstances.

Background

Canada is now applying retaliatory “tariffs” on US origin goods by imposing a 25% surtax on US origin imports of steel and a 10% surtax on US origin imports of aluminum and various finished goods.¹ These surtaxes are in response to the US decision on 1 June to impose a 25% and 10% duty on imports of Canadian steel and aluminum, respectively, on the grounds that these imports impair national security as defined in section 232 of the *Trade Expansion Act of 1962*. For further details, see EY Tax Alert - Canada 2018 Issue No. 23, *Canada to impose retaliatory tariffs on certain US origin products starting 1 July 2018*.

¹ SOR/2018-152, SOR/2018-153

As we noted in EY Tax Alert 2018-24 dated 6 July 2018², Canada's Duty Relief and Duty Drawback programs authorized under sections 89 and 113 of the *Customs Tariff* and administered by the Canada Border Services Agency (CBSA) are available to importers that meet the requirements of the programs and who import goods affected by the Canadian countermeasures and either re-export the goods or use them as manufacturing inputs to other goods exported. Qualifying importers will thus be able to obtain a refund of or defer the payment of the surtaxes in respect of exported goods.

In addition, the federal government has confirmed it will accept remission applications to relieve unfair/unintended applications of the surtax or hardship in limited circumstances.

How to qualify

Duty Drawback Program

The Duty Drawback Program provides a *refund* of the surtax imposed under the orders for goods that are:

- ▶ Exported in the same condition as imported;
- ▶ Further processed then exported;
- ▶ Display or demonstration; or
- ▶ Used as inputs to produce other goods for export.

In order to obtain a refund, qualifying importers must complete the appropriate claim form and attach all necessary documentation to substantiate the import, export and processing (if applicable).

Duties Relief Program

The Duties Relief Program provides for *relief* of the surtaxes, at time of importation, as long as one of the following conditions is met:

- ▶ Goods are exported in the same condition as imported;
- ▶ Goods are imported for further processing and exported;
- ▶ Goods are displayed or demonstrated in Canada; or
- ▶ Goods are used in the production or development of goods for export.

Importers must apply in advance to the CBSA, demonstrating that their record keeping is satisfactory to support a request for duty relief and that the subject goods qualify.

The CBSA will conduct an onsite validation and, once approved, an authorization number will be provided that will grant the importer relief from payment of the surtax at the time of importation. It will remain the obligation of the importer to pay the surtax if goods become non-qualifying post-importation. Note that authorization does not apply retroactively;

² Tax Alert - Canada 2018 Issue No. 24, *Update: final import surtaxes imposed on certain products originating in the US. CBSA Customs Notice issued.*

surtaxes paid on goods imported prior to receiving authorization can be recovered through a drawback claim once the goods are exported from Canada.

If the goods are sold or transferred to another company in Canada, that company must be registered under the Duties Relief Program in order to benefit from the relief of the surtax.

Remission of surtaxes

The Minister of Finance, under section 115 of the *Customs Tariff*, has the authority to recommend remission to the Governor in Council for relief and refund of the recently imposed surtaxes.

The remission of the surtax³ is used to address exceptional and compelling circumstances that from a public policy perspective are found to outweigh the primary rationale behind the application of the surtaxes. Specifically, the federal government will consider requests for remission of the surtaxes that took effect on 1 July in the following instances:

- ▶ To address situations of short supply in the domestic market;
- ▶ If there were contractual requirements, existing prior to 31 May 2018, for Canadian businesses to use US steel or aluminum in their products or projects;
- ▶ To address, on a case-by-case basis, other exceptional circumstances that could have severe adverse impacts on the Canadian economy by imposing hardship on Canadian companies.

Impact for businesses

Businesses in the automotive parts, steel, aluminium, metal stamping, export manufacturing, oil & gas, and construction sectors will likely benefit most from both programs and the remission of surtax.

Regarding remission of the surtaxes, interested parties can make application in the required format complete with all necessary information. Only companies registered in Canada are eligible to submit requests for remission. Importers interested in applying for remission must ensure that their submissions are completed correctly and in a timely fashion, as the granting of remission does involve some delay, and remissions will not be granted if the information provided is incomplete, inaccurate or not compelling from a sound tax policy and fairness point of view.

Likewise, the Duty Relief and Duty Drawback programs require that importers meet certain administrative requirements to qualify for the programs, and importers must continuously demonstrate compliance with program requirements to remain eligible and avoid fines or penalties. As trade tensions in North America and around the globe show no signs of abating, importers would be wise to act expeditiously to take advantage of the aforementioned

³ <https://www.fin.gc.ca/access/remis-eng.asp>

programs if they are eligible to do so. EY's Global Trade professionals are highly experienced in assisting clients with applications for remission, duty relief and duty drawback.

For further information or to discuss application processes, please contact your EY or EY Law advisor or one of the EY Global Trade team members listed below:

Toronto

Dalton Albrecht
Canadian Leader, Global Trade
+1 416 943 3070 | dalton.albrecht@ca.ey.com

Sylvain Golsse
+1 416 932 5165 | sylvain.golsse@ca.ey.com

Ray Fischer
+1 416 932 5975 | ray.fischer@ca.ey.com

Vancouver

Katherine Xilinas
+1 604 899 3553 | katherine.xilinas@ca.ey.com

Montreal

Mike Cristea
+1 506 443 8408 | mihai.cristea@ca.ey.com

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization and may refer to one or more of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

About EY's Tax Services

EY's tax professionals across Canada provide you with deep technical knowledge, both global and local, combined with practical, commercial and industry experience. We offer a range of tax-saving services backed by in-depth industry knowledge. Our talented people, consistent methodologies and unwavering commitment to quality service help you build the strong compliance and reporting foundations and sustainable tax strategies that help your business achieve its potential. It's how we make a difference.

For more information, visit ey.com/ca/tax.

About EY Law LLP

EY Law LLP is a national law firm affiliated with EY in Canada, specializing in tax law services, business immigration services and business law services.

For more information, visit eylaw.ca.

About EY Law's Tax Law Services

EY Law has one of the largest practices dedicated to tax planning and tax controversy in the country. EY Law has experience in all areas of tax, including corporate tax, human capital, international tax, transaction tax, sales tax, customs and excise.

For more information, visit <http://www.eylaw.ca/taxlaw>

© 2018 Ernst & Young LLP. All Rights Reserved.

A member firm of Ernst & Young Global Limited.

This publication contains information in summary form, current as of the date of publication, and is intended for general guidance only. It should not be regarded as comprehensive or a substitute for professional advice. Before taking any particular course of action, contact EY or another professional advisor to discuss these matters in the context of your particular circumstances. We accept no responsibility for any loss or damage occasioned by your reliance on information contained in this publication.