Post Clearance Audits and Customs Opportunities

Presentation by PwC Limited
April 2022
## Program

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Presenters

Pamela Natamba
Partner – Tax Leader

Harriet Nakaddu
Senior Manager - Indirect Tax Services

Juliet Najjinda
Manager Indirect Tax Services

Nicholas Kabonge
Manager – Indirect tax services
Welcome Remarks

Pamela Natamba
Partner, Tax
Oil and Gas Leader
PwC Uganda
Introduction to customs and Customs Legislation

Harriet Nakaddu
Senior Manager, Indirect Tax Services
PwC Uganda
Overview of customs
Introduction

What is customs duty

Country A

Shipper / Exporter

Logistics provider

Exported Goods

Country B

Importer

Imported Goods

Services

Customs
Application of customs

- Customs duties - taxes levied on imports or exports
- A customs territory – country or trade area, trade bloc
- A trade bloc is a type of intergovernmental agreement, often part of a regional intergovernmental organization, where barriers to trade are reduced or eliminated among the participating states e.g. EAC
- A free trade area is a grouping of countries within which tariffs and non-tariff trade barriers between the members are generally abolished but with no common trade policy toward non-members AfCFTA
Components of customs duty

**Import duty**
- Rates specified in the Common external Tariff on Cost, Insurance and freight
- Computed at 6% on imports by non-exempt suppliers
- At 18% on all standard-rated imports
- Taxable value is CIF value + import duty + infrastructure levy + environmental levy

**Excise duty**
- Rates specified by the Excise Duty Act

**Value Added Tax**

**Examples**
- Import duty - the CET
- VAT - the VAT Act
- Excise duty – Excise Duty Act
- WHT – Income Tax Act

**Other levies**
- Infrastructure levy - 1.5% of CIF
- Environmental levy – depends on year of manufacture of the motor vehicles and earth moving equipment.
Benefits of customs duty

- source of revenue
- protection of domestic economy
  - dumping
  - smuggling

Excludes

- anti-dumping duties;
- anti-subsidy duties; and
- retaliatory taxes which are not listed in the tariffs.
Background to the Customs procedures in Uganda

- Uganda is part of a single customs territory
- The East African Community (EAC) - Customs Union
- Idea of a Single Customs Collection point started in 1900 at Mombasa.
- Involved – changing from a single customs territory (i.e., country) to a trade area / bloc
- Comprising of two or more customs territories
- Member states agree to apply a common external tariff or other regulations of commerce with other territories, the non member states
- E.g The customs territories agree to apply a Common Internal Tariff (of 25% on all Steel imports and a 0% on all Coffee exports)

Enablers of collaboration amongst member states

- Interconnectivity of customs systems to facilitate seamless flow of information between customs stations
- A tax payment system to manage transfers of revenues between EAC Partner States
- Legislation to govern international trade of the member states
Customs Legislation
East African Community (EAC) - Customs Union

The EAC Customs Union

➔ EAC Customs Union Protocol concluded and signed in March 2004

➔ The Customs Union effective from start of 2005 with 5 year transitional period

➔ 7 Member states

➔ Determine the product offering strategies and tax credits and incentives that align with ESG motivated changes to value chain

EAC Members as at 29 March 2022

[Map showing EAC member states: South Sudan, Uganda, Kenya, Rwanda, Burundi, Kinshasa, DR Congo, Tanzania]
Customs legislation

- East African Community Customs Management Act, 2004 R.E 2012 (‘EACCMA’)
- East African Community Customs Management Regulations, 2010 (‘EACCMA’)
- EAC Customs Union (Rules of Origin) Rules
- Gazettes
- Customs Post Clearance Audit Manual

Supplements to Customs legislation

- Income Tax Act CAP 340
- Value Added Tax Act, Cap 349
- Excise Duty Act, 2014
- Infrastructure levy
- Environmental levy
The EAC Road map

2000 – 2005
3 nations ratified the EAC treaty

2006 – 2011
5 total members in the EAC

Kenya, Uganda & Tanzania join

Rwanda & Burundi join

South Sudan joins EAC on Sept 2016

2012 – 2015
EAC HQ established in Arusha

AfCTA signed by 44 member states

2016 - 2021
AfCFTA - African Continental Free Trade Area

DRC joins the EAC on 29 Mar 2022

2019 - 2020
7 member states in total
Customs clearance – Single Customs Territory

➢ The authorisation of goods to enter or leave a customs territory

➢ preparation of documents

➢ electronic submissions

➢ Determining and payment of taxes / levies.

➢ EAC adopted the Single Customs Territory (SCT) for clearance of goods.

➢ ASYCUDA world system.
Benefits of a single customs territory

- Reduced cost of doing business i.e., eliminates duplication of processes
- Reduced administrative costs and regulatory requirements
- Creation of a mechanism for prevention of smuggling at a regional level
- Reduced risks associated with non-compliance on the transit of goods
- Benefits of economies of scale and optimal use of resources in clearance of goods in the EAC
- Eliminates all non-tariff barriers to trade and other charges of equivalent effect amongst members states
The system is premised on a risk selectivity module which, gauges on the captured taxpayer profiles.

This can route entries for clearance through any of the four lanes of clearance of the goods from the Central Business centre (CBC). These include;

- **Blue lane** - Very compliant, No risk assessment, goods are cleared subject to PCAs e.g Authorised Economic Operators (AEOs)

- **Green lane** - No inspection, only risk assessment. This is subject to Post Clearance Audits (PCAs)

- **Yellow lane** - Only documents are checked and no physical inspection

- **Red lane** – here the goods are stopped for physical examination of the goods

- **Orange lane** - New risk selectivity lane not yet adopted by the EAC
Customs Clearance Cycle and Post Clearance Audits

Presentation by Nicholas Kabonge
Manager, Indirect Tax Services

PwC Uganda
Customs clearance cycle and Documentation
Customs clearance cycle

1. Goods arrival
The importer is notified of the arrival of the goods by the ship’s agent.

The importer contracts a clearing and forwarding agent to carry out customs clearance on his/her behalf and provides the relevant documentation.

1. Documentation
The clearing agent transmits declarations/entries electronically to URA with information obtained from their clients.

5. Customs inspection
Customs checks documents for compliance e.g. the details on the entry i.e. CPC used, tariffs, customs values and quantities.

6. Cargo release
After completion of the necessary inspection and verification of the documentation, the cargo is released by the URA to the importer.

3. Processing
The procedures and processes applied for clearing of goods depend on the Customs Procedure Codes ("CPC") declared in the customs entry.

The CPC indicates the trade regime selected e.g. home use, transit etc.

4. Duty payment;
Customs operates under a self-assessment regime.

The importer therefore, based on the information provided, assesses the amount of duty due to the CBCD and pays the amounts to the bank.

Customs duty is determined by the classification code of a good and the tariffs applicable.

7. Post clearance Audits
Customs usually subject importers to Post Clearance Audits ("PCA") on a risk based approach – goods released through green channel are definite targets.
Essential documentation in Customs transactions is as follows:

- Proforma invoice
- Commercial invoice (mandatory)
- Insurance certificates (where applicable)
- Freight invoices (where applicable)
- Sales Contract/Agreement (where applicable)
- Certificate of Origin (for preferential rate, it is mandatory)
- Shipment documents (Bill of Lading, Airway Bill, Railway Consignment Note)
- Certificate of Origin (for preferential rate, it is mandatory)
- Packing lists (mandatory)
- Payment advices and receipts
Post Clearance Audits (PCA’s)
Why Post Clearance Audits?

A Post Clearance Audit (PCA) is an audit carried out after the importer has received delivery of the goods.

The aim of the audit is to check compliance with all customs regulations post – event; through examination/verification of the importer’s records and systems.

PCAs generally cover the following areas:

- Tariff classification
- Foreign currency
- Claims for concessionary duty rates
- Valuation
- Application of exemptions
- Country of origin / export

Introduction of PCAs was envisaged to deliver the following benefits:

- **Reduced release time** – Reduce time taken while goods are in Customs’ custody
- **Saving storage fees** - Expedited clearance process means reduction of storage, warehouse and insurance costs
- Facilitating qualification for Authorized Economic Operator Schemes
- Encourages self assessment
- Reduces litigation costs
• **Section 236 of EACCMA** provides that the Commissioner shall have the powers to:

  • Verify accuracy of declarations through examination of records and any other data related to the goods
  
  • Question any person involved in the business or any person in possession of data relevant to entry of goods
  
  • Inspect the premises of the owner of the goods or any other place of the person involved in operations
  
  • Physically examine the imported goods, where possible obtains a sample of the goods
Section 235 of EACCMA provides that a proper officer of Customs may within 5 years of importation, exportation, transfer or manufacture of goods require the owner:

- To produce any documentation in relation to the goods.
- To answer any question in relation to the goods
- To make any declarations in relation to the goods as the proper officer may deem fit.
A number of issues could trigger an audit. These may include the following:

1. Previous audits with considerable risk;
2. Volume and value of client’s transactions (indicator of level of risk);
3. Fluctuations in declared values;
4. Comparison with values of identical or similar goods;
5. Importers under duty remission schemes;
6. Reputation of clearing agents; and
7. Related party transactions;
The common errors under PCAs include the following:

- Under declaration of value to Customs;
- Misuse of exemptions under 5th Schedule to the EACCMA;
- Incorrect classification of goods;
- Incorrect application of foreign currency exchange rates;
- Misstatement of origin of the goods;
- Computing import duty on air freight;
- Customs documentation retained by a Clearing agent and not handed over to the Principal (importer);
- Failure to remit taxes assessed by Customs;
- Failure to obtain pre-importation rulings from the URA;
- Failure to file required forms to terminate VAT deferment on plant and machinery
### Offences under Customs legislation

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<td>Bribing an officer</td>
<td>Imprisonment for a term not exceeding 3 years</td>
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<tr>
<td>Removing or defacing Customs seal</td>
<td>Imprisonment for a term not exceeding 3 years or a fine not exceeding $2500 or both</td>
</tr>
<tr>
<td>Making or using false documents</td>
<td>Imprisonment for a term not exceeding 3 years or a fine not exceeding $10,000 per entry</td>
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<tr>
<td>Offences for which no penalty is provided</td>
<td>Fine not exceeding $5000 or the court may impose a fine not exceeding 3 times the value of the goods</td>
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<td>Importation/ exportation of concealed goods</td>
<td>50% of the value of goods involved</td>
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Key opportunities in customs

Presentation by Juliet Najjinda
Manager, Indirect Tax services
PwC Uganda
Key opportunities in customs
There are a number of customs opportunities that tax payers can take advantage of to ease customs procedures or to obtain customs exemption.

1. Authorised Economic Operator ("AEO") program
2. Pre-importation customs rulings
3. VAT deferment
4. Temporary importation regime
5. Dispute resolution
6. Tax exemptions under the East African Community Customs Management Act
Authorised Economic Operator (AEO)

Overview of AEO program

• An initiative aimed at enhancing trade through simplifying customs procedures and reducing customs clearance times

• Enhances the relationship between businesses and the Customs Administrations by implementing preferential treatment to businesses that are established to be compliant through a structured assessment of risk (accreditation).

• Interested taxpayers required to apply to URA for accreditation

• Applicants should demonstrate a record of tax compliance, financial solvency, availability of systems and security safeguards etc

What are the benefits of AEO status

• Customs preferential treatment e.g. first priority for clearance of goods;

• Reduced inspection of imports- either blue or green channel inspection.

• Verification at owner’s premises for delicate cargo;

• Obtaining withholding tax exemption status

• Facilitation with regards to Customs controls related to security and safety
Who can apply for AEO status

- Exporters
- Importers
- Transporters
- Freight forwarders

- Customs agents
- Bonded warehouse owners
- Manufacturers

- An applicant MUST be a legal entity incorporated or registered with in the EAC.

- Natural persons may be eligible for accreditation subject to volume of importation and history of customs compliance.

- An importer may apply to URA for accreditation. The application is followed up by inspections by URA to verify the information declared in the application.

- An independent assessment on URA reported a reduction of Clearance time for AEOs from 4 days to 1 day.
Pre-importation rulings: Customs rulings

**When should importers obtain pre-importation rulings**

- Importers can apply to the URA for a customs ruling on the classification of their goods.
- For machinery and equipment being imported in a knocked down state.
- URA will seek to classify the different components as separate parts so that duty is payable on the parts if a ruling is not obtained.
- Equipment that qualifies for various customs duty exemptions and VAT deferment.

**Benefits of obtaining pre-importation rulings**

- Clarity on the treatment of the imported goods.
- Opportunity to object to the treatment if not favourable.
- Ruling is binding on the URA – if all information required is availed.
- Financial planning for the business.
VAT deferment on importation of plant and machinery

VAT deferment is a procedure which saves a VAT registered taxpayer from incurring VAT cash flow at the point of importing equipment.

It applies to plant and machinery under chapters 84 and 85 of the Common External Tariff for use in production of taxable supplies.

An application must be submitted with the customs bill of entry, invoices, packing lists, bill lading or airway bill.

It is advisable to obtain URA’s advance ruling for major imports.

- Deferment applies to equipment that cost at least USD 4,000 expires within 30 days - in practice, it can be longer
- **Note – Spares are not deferrable**
Tax exemption under the Temporary importation regime

- Goods imported for a temporary use or purpose may be exempted from customs duty.
- The importer should apply to the Commissioner prior to importation providing:
  - Detailed inventory of goods to be imported;
  - Justification for temporary importation (government contract, repair, employment);
  - Duration of temporary importation;
- Temporary importation permission granted for an initial period of one year. (Renewable)
- Tax payer will be required to pay security equivalent which is discharged at the time when the goods are being re-exported
- Duty and penalties will be payable where a tax payer contravenes the temporary importation conditions e.g. through disposal, failure to re-export, alteration etc.
Other opportunities

Tax exemptions under the Fifth Schedule of the EAC Customs Management Act

- Personal effects for returning residents
- Inputs for Agriculture, Aquaculture and horticulture, subject to Commissioner’s approval
- Diapers, Urine bags and hygienic bags
- Hotel Equipment marked with the hotel logo imported by its use
- Items imported for use in licensed hospitals
- Industrial spare parts imported as replacement parts used on industrial machinery classified in Chapters 84 and 85

Dispute resolution

- Engaging the Trade division of URA to seek guidance where a taxpayer is dissatisfied with the assessment given at the customs boarder post
- Opportunity to object to customs assessments where a tax payer may not be in agreement
- Appealing to the Commissioner customs on a decision issued by the customs audit team
- Engagement of the Alternative Dispute Resolution framework
Q&A Session
Thank you