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## **New rules issued relating to the voluntary disclosure of customs noncompliance**

On June 30, 2022, China's General Administration of Customs ("GAC") issued new rules regarding the waiver of administrative penalties on customs duty-related noncompliance in case of voluntary disclosure made by enterprises ("**Bulletin [2022] No. 54**"). Those rules will be effective from July 1<sup>st</sup>, 2022 until December 31<sup>st</sup>, 2023, and replace the GAC's first guidance on the topic ("**Bulletin [2019] No. 161**"), which clarified for the first time in 2019 country-wide conditions under which the penalties can be waived in case of disclosure of customs duty-related noncompliance.

As a reminder, the amount of penalty applicable to customs duty-related noncompliance lies, under the customs law, between 30% and twice the amount of the unpaid duties.

The new Bulletin No. 54 has brought some adjustments to the conditions set under Bulletin No. 161, which are set out below you in a comparison table.

To summarize, the new rule provides for more lenient conditions in terms of timing and duty thresholds, with the aim to encourage enterprises to make self-audit and voluntary disclosure of their customs noncompliance. On the other hand, in order to push enterprises to disclose rapidly after noticing their mistake (s), any disclosure occurring one-year after the date of infringement period will be disregarded for the treatment of penalty waiver. The new rule also limits the application of the relief measure to disclosure of a new noncompliant matter, so that repetitive violations cannot benefit from penalty waiver.

On the side of operators, to take advantage of the new rule and avoid the risk of missing statutory deadlines, enterprises are suggested to:

- Review regularly their compliance situation in terms of customs matters;
- Identity potential noncompliant matters and assess their consequences;

- If necessary, launch the voluntary disclosure procedure for which enterprises shall carefully prepare the application documents including the application form, account books, invoices, customs documents and other supporting materials.

Finally, please bear in mind that the penalty waiver regime under Bulletin No.54 (previously Bulletin No. 161) only applies to the duty-related noncompliance matters, which means that other kinds of noncompliance such as smuggling, violations in terms of license control or export/import restrictions or prohibitions etc. are not covered. In addition, even if a voluntary disclosure of duty-related noncompliance does not satisfy the conditions under Bulletin 54 for the waiver of penalties, the enterprise may still try to apply for the reduction of penalties according to the <PRC Regulations on Customs Audit>.

Items	Bulletin No. 54 (New rule)	Bulletin No. 161 (Old rule)	Changes
Unconditional penalty waiver for the voluntary disclosure made within a specified time limit	The customs authorities will waive the penalties if the noncompliance is disclosed within <u>6 months</u> from the date when the matter occurred.	The customs authorities will waive the penalties if the noncompliance is disclosed within <u>3 months</u> from the date when the matter occurred and if the enterprise proactively eliminates any harmful consequences of such noncompliance.	<ul style="list-style-type: none"> <li>➤ The time limit for the voluntary disclosure has been extended from 3 months to 6 months.</li> <li>➤ The condition of “proactively eliminating any harmful consequences”, which is difficult to be assessed in practice, has been removed.</li> </ul>
Conditional penalty waiver depending on the amount of unpaid duties	If the disclosure is made <u>after the 6-month period but within one year</u> , the penalties can also be waived either if the underpaid duties account for less than <u>30%</u> of the duties payable, or if the underpaid duties are less than <u>1,000,000 RMB</u> (environ 140,000 EUR).	If the disclosure is made <u>after the 3-month period</u> but the enterprise proactively eliminates any harmful consequences of such noncompliance, the penalties can also be waived either if the underpaid duties account for less than <u>10%</u> of the duties payable, or if the underpaid duties are less than <u>500,000 RMB</u> (environ 70,000 EUR).	<ul style="list-style-type: none"> <li>➤ The new rule sets a <u>deadline of one year</u> above which the enterprise can no longer enjoy the penalty waiver, which is less preferential than the old rule. The objective is to encourage enterprises to disclose as early as possible the noncompliance without waiting for ever.</li> <li>➤ The thresholds of underpaid duties have respectively been increased from 10% to 30%, and from 500,000 RMB to 1,000,000 RMB, which makes easier for enterprises to benefit from the relief measure.</li> <li>➤ The condition of “proactively eliminating any harmful consequences”, which is difficult to be assessed in practice, has been removed.</li> </ul>

Reduction and waiver of late-payment interests	An enterprise that voluntarily discloses the duty-related noncompliance and is therefore given a waiver of administrative penalties can apply for the reduction or waiver of late-payment interests. The customs shall grant such reduction or waiver once conditions are met.	Not specified	<ul style="list-style-type: none"> <li>➤ The possibility of applying for the reduction and waiver of late-payment interests is already set out in the &lt;Implementation Measures of PRC Regulations on Customs Audit&gt;. The new rule reiterates and further confirms this regime.</li> </ul>
Impact on enterprise's customs credit rating	If, after voluntary disclosure, the company receives a warning or a fine of less than <u>1,000,000 RMB (environ 140,000 EUR)</u> , it will not impact the enterprise's customs credit rating.	If, after voluntary disclosure, the company receives a warning or a fine of less than <u>500,000 RMB (environ 70,000 EUR)</u> , it will not impact the enterprise's customs credit rating.	<ul style="list-style-type: none"> <li>➤ The threshold of the fine that is not recorded in the enterprise's customs credit system has been increased from 500,000 RMB to 1,000,000 RMB.</li> </ul>
Limitation on the repetitive noncompliance	The waiver measure under the Bulletin does not apply if the enterprise voluntarily discloses the same noncompliance matter again to the customs authorities.	Not specified	<ul style="list-style-type: none"> <li>➤ The new rule has included an additional condition that the penalty waiver only applies to the voluntary disclosure of a new noncompliant matter. Repetitive noncompliance can therefore not enjoy the relief measure.</li> </ul>

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