TaxAlert

December 2008

KPMG TAX M.MICHNA SP.K.

The changes in the Community customs regulations that enter into force on January 1, 2009 sharpen the requirements to be met by applicants for the grant of the simplified procedure. The changes result from the introduction of the authorized economic operator (AEO).

As of January 1, 2009, an amendment to Council Regulation (EEC) No 2454/1993 of July 2, 1993 laying down provisions for the implementation of the Community Customs Code, adopted recently by the Member States of the European Union, will become effective. The new regulation specifically changes the procedure for granting authorizations and the functioning of simplified customs procedures. Sharpened will be the requirements to be met by applicants for the authorization to benefit from particular procedures.

For holders of the former authorizations, this change means that their procedures will need to be adjusted to the new conditions. Importantly, as of January 1, 2009, the customs authorities will launch verification of authorizations issued under the regulations still in force today. If an operator's activity is found to be incompatible with the changed requirements, the authorization may be withdrawn.

The direction of changes in the provisions on application of the simplified procedures suggests that it is the Community legislator's intention to prompt the economic operators to acquire the AEO certificate. According to the signals from the European Commission and the customs authorities of other EU Member States, all operators dealing mainly with international trade in goods are expected to aim toward the promptest possible acquisition of the AEO status.

Characteristically, the new requirements pertaining to the use of the simplified procedures largely concur with the requirements imposed on applicants for the AEO status. The criteria include observance of the customs regulations, keeping of an appropriate system for management of commercial and transport records, as well as documented solvency. Further, the grant of the authorization to benefit from the simplified procedures to the holders of the AEO certificate will depend solely on adjustment of the manner of exchange of the required information between the applicant and the customs authority granting the authorization.

In the light of the above amendment, it becomes more advantageous for operators whose activity bases on the Community customs regulations to apply for the status of the authorized economic operators. Having met requirements similar to those for the simplified procedures, they will benefit from additional privileges of holders of the AEO certificate.

The Authorized Economic Operator (AEO) status

The AEO certificate confirms the operator's observance of all cargo security and safety standards, and at the same time authorizes that operator to benefit from specific customs facilitations.

Depending on activity pursued, the operators may apply for three different types of AEO certificates:

- AEOC Certificate – Customs Simplifications;
- AEOS Certificate – Security and Safety;
- AEOF Certificate – Customs Simplifications / Security and Safety (combined certificate).

Pursuant to the provisions of the Regulation, economic operators may apply for the AEO status if they pursue activity regulated by customs provisions and have their office within the Community. Today, three Polish customs chambers, in Warsaw, Szczecin and Wrocław, are empowered to issue the AEO certificates in Poland. However, an amendment to the Customs Law to enter into force on January 1, 2009, empowers the heads of all customs chambers to issue the AEO certificates. The amendment is to make the procedure for the grant of the AEO status more efficient and to accelerate it.

The criteria for the grant of the status of authorized economic operator include:

- compliance with the customs requirements;
- a satisfactory system of managing commercial and, where appropriate, transport records, ensuring a proper customs control;
- documented financial solvency;
- in relevant cases, appropriate security and safety standards.

The certification process consists in detailed verification of each of the above criteria with due consideration to individual operators' structure and subject of activity. This includes, among other things, verification of documents and the use of information possessed by the domestic administration and customs authorities of other countries. The customs authorities verify whether the operator's procedures, records kept, employee training methods and internal supervision of compliance with appropriate standards guarantee safety of the supply chain. The scope of such inspection is the period of the past 3 years.

Despite the unlimited duration of the AEO status, also holders of the certificate are subject to continuous monitoring by the customs authorities from the viewpoint of consistent observance of the required standards. Any violations of the law or discovered inconformity to the requirements may result in suspension or even withdrawal of the granted status.

Benefits of the AEO status

The economic operators that are granted the certificate as a result of as detailed an inspection become reliable and trustworthy partners of the customs services within their specific customs operations. As a consequence, they become entitled to specific benefits throughout the Community. Thus, the authorized economic operators are entitled to:

- fewer physical and document-based controls (an AEO gets a lower risk score and benefits from accelerated customs clearance);
- fewer controls of goods entered for clearance and priority treatment in the case of selection of goods for control;
- the possibility of applying for the control to be held in a place other than the customs office;
- notification in advance of the selection for control;
- submission of summary declarations with a limited scope of security and safety data;
- facilitated access to customs simplifications (the customs authorities do not re-examine the criteria that have already been examined within the procedure for granting the AEO certificate).

In view of the fact that the AEO certificates are recognized throughout the European Union, the authorized economic operators can expect privileged treatment by the customs services all over the Community. Systems similar to the AEO are already in operation, e.g. in the United States (C-TPAT) and Canada (FAST). The emerging plans of their mutual recognition justify the assumption that the certified entities will benefit in the future from limited control and other facilitations also in contacts with the customs administration of countries from outside the EU.

Simplified procedures as the condition of neutral settlement of VAT on imports

It is also worth mentioning that pursuant to the amendment to the Act on goods and services tax, passed by the Lower Chamber of the Polish Parliament on November 2008, the taxpayer may, as of December 1, 2008, settle the amount of VAT payable on account of imports of goods in a tax return submitted for the period in which the tax obligation on account of the imports of those goods arose. As a consequence, the economic operator may avoid the actual payment of VAT on imports.

However, this form of settlement will only be available to taxpayers using the simplified procedure for imports transactions, with the calendar month as the settlement period.

This will result in a privileged position of the AEO certificate holders. Benefiting from facilitated access to the simplified customs procedures, they will at the same time become entitled to the conveniences related to settlement of the tax on goods and services.

The direction of the changes in the customs and tax regulations suggests that the authorized economic operator's status will ever more often entitle its holder to benefit from simplifications in contact with the customs administration within the Community. It is highly probable that in the future, availability of some simplified procedures will be restricted to the holders of the AEO certificates only.

If you are interested in details of this issue, and specifically in practical instructions as to acquisition of the AEO status, you are kindly requested to contact us.

Contact details

Krzysztof Stefanowicz
Director
Tel.: +48 (22) 528 11 63
Fax: +48 (22) 528 11 59
kstefanowicz@kpmg.pl

Marek Szymański
Senior Manager
Tel.: +48 (22) 528 10 34
Fax: +48 (22) 528 11 59
mszymanski@kpmg.pl

KPMG Offices

Warsaw Office
ul. Chłodna 51
00-867 Warszawa
Tel.: +48 (22) 528 11 65-71
Fax: +48 (22) 528 11 59
tax@kpmg.pl

Cracow Office
al. Armii Krajowej 18
30-150 Kraków
Tel.: +48 (12) 424 94 00
Fax: +48 (12) 424 94 01
tax.krakow@kpmg.pl

Poznan Office
ul. Roosevelta 18
60-829 Poznań
Tel.: +48 (61) 845 46 00
Fax: +48 (61) 845 46 01
tax.poznan@kpmg.pl

Wroclaw Office
ul. Bema 2
50-265 Wrocław
Tel.: +48 (71) 370 49 00
Fax: +48 (71) 370 49 01
tax.wroclaw@kpmg.pl

Gdansk Office
ul. Piwna 28-31
80-831 Gdańsk
Tel.: +48 (58) 321 96 00
Fax: +48 (58) 321 96 01
tax.gdansk@kpmg.pl

Katowice Office
ul. Powstańców 43
40-024 Katowice
Tel.: +48 (32) 200 65 05
Fax: +48 (32) 200 65 10
tax.katowice@kpmg.pl