



Newsletter

International Trade and customs Practice Group

Imports through courier companies - Another risk to be taken into consideration by Mexican taxpayers

It is a fact that, since a few years ago, and mainly due to the multiple changes that the COVID19 pandemic had on our way of life, the acquisition of all kinds of goods through digital platforms has dramatically increased. The acquisition of foreign goods through different means and platforms that involve shipping through courier companies also has also significantly increased.

For several months, many companies and national trade associations have insisted that many of these operations contravene the provisions applicable to the importation of goods and have requested to the corresponding authorities to take action on the matter, and stop what, from their point of view, is a form of unfair competition violative of the provisions regarding the importation of goods and the payment of taxes on foreign trade.

Therefore, on May 30 of this year, the tax and customs authorities published on the official website of the Tax Administration Service (SAT) Official Communication 032/2024, "SAT identifies courier and parcel delivery companies that carry out irregular imports".

From this communication it should be noted that:

- The SAT has identified that foreign companies dedicated to internet sales, e-commerce platforms, consignees, and courier and parcel companies, have carried out illegal practices in their imports, omitting the payment of the General Import Tax (IGI), Value Added Tax (IVA), and have failed to comply with regulations and tariff restrictions.

It is important to note that the communication establishes that, according to such criteria, foreign companies, as well as courier companies and consignees, are the

ones who, from SAT's point of view, carry out such illegal practices.

It is interesting that the SAT determines whether a foreign company that carries out operations through electronic platforms carries out illegal practices, when such company is not formally carrying out any regulated activity in terms of the Customs Law. It is also important to note that courier companies, whose only function is the transportation of such goods, are responsible for carrying out illegal practices that result in a possible omission of taxes.

Finally, it is also considered that the consignees, possible purchasers of such merchandise, carry out illegal practices, when they are not in charge of the declaration of the values or requirements of the merchandise sent to them by the foreign companies.

The alleged illegal practices consist in, from the authorities' perspective, the following:

- Manipulation of the packages with the purpose of separating merchandise that is part of a single shipment, in violation of Rule 3.7.5. of the General Rules on Foreign Trade Matters (RGCE) regarding the "*simplified procedure to import goods through courier and parcel companies*", which establishes that it may not be applied to the importation of goods whose shipment is part of a series of shipments made or planned with the purpose of avoiding customs duties or taxes, or avoiding any regulation applicable to the formal entry procedures, as well as not exceeding the maximum amount established in Rule 3.7.35, section I of the RGCE.
- Declaring a generic or different fraction from the original one.

- Omitting the correct description of the imported merchandise.
- Declaring an undervalue (undervaluation).

It is interesting how the authorities intend to determine which acts or omissions carried out abroad by a legal entity not subject to Mexican provisions have the sole purpose of evading duties, taxes or regulations.

Likewise, it is interesting that the authorities intend to determine that foreign companies not subject to compliance with Mexican provisions carry out activities related to a declaration of inapplicable tariff codes or declarations of value thereof WITH THE PURPOSE OR OBJECTIVE OF AVOIDING TAXES AND DUTIES on the importation of such merchandise into Mexican territory.

Based on the above, the SAT has provided the amendment of Annex 5 of the RGCE, to add within the "Non-binding Criteria", the Criteria "2/LA/NV" (Dispatch of merchandise through registered courier and parcel companies)" to establish as improper practices that alter foreign trade operations:

- The manipulation of orders that are shipped on the same day, week or month, dividing them into individual packages in which the original value of the order is undervalued, so that the value of each package does not exceed US\$50.

It is unclear on what legal basis the authorities will be able to determine that a foreign company carries out a "manipulation of orders" for shipment to the same consignee or importer in Mexico in a given period of time, with the sole purpose of each package being less than a total value of USD\$50.00.

In reality, these types of sales or services are carried out in an automated fashion, and it is unlikely that there would be elements upon which it could be concluded that the sole purpose of a commercial transaction of a certain value is to avoid taxes or non-tariff requirements for importation into Mexico.

- *Assisting, helping, aiding, collaborating, contributing, cooperating, coordinating or participating directly or indirectly to improperly apply the simplified dispatch of goods through courier and parcel companies; omitting the payment of IGI and VAT; as well as not describing or incorrectly describing the products.*

In this sense, certain generic acts or omissions are established in order to determine when an action tending to avoid the payment of taxes or the compliance with obligations in the importation of goods into Mexican territory is carried out.

From our standpoint, the proposed wording could include any individual or legal entity that has any type of interaction with a company abroad that carries

out sales to residents in Mexico via the internet or commercial platforms.

It should be noted that such actions would also require a willingness to improperly apply the simplified clearance procedure and the omission of the corresponding taxes.

- Anyone who advises, counsels, provides services or participates in the execution or implementation of any of the above practices.

Finally, one of the most critical issues is that not only those persons who have a direct action in the sale, acquisition, shipment or importation of certain goods are considered participants or actors in an illegal practice, but also third parties that could carry out actions related to the "implementation of any of the above practices".

This wording could imply that any person who, in one way or another, provides advisory services to foreign companies or couriers, or even recipients or purchasers of goods that, in the opinion of the authority, have the purpose of avoiding the payment of taxes or compliance with obligations, could be included as responsible for the commission of an illegal practice.

As a result of these criteria, there is a constant reference to the possibility of committing tax crimes such as smuggling or tax fraud, which gives a clear signal of a possible "witch hunt" or "tax terrorism", not only to sellers, transporters or purchasers of this type of goods, but to any other person who in one way or another has a relationship with companies that carry out this type of operations.

It will be interesting to see how the tax or customs authorities intend to implement these criteria in a way that complies with the law that should prevail in tax and customs matters.

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