

# Law on Amendments to the Customs Law

## Tax Alert

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At its session held on 9 December 2022 the Serbian Parliament adopted the Law on Amendments to the Customs Law. The Law is published in the Off. Gazette of RS, no. 138/22 and goes into effect on 20 December 2022.

The said law amends the provisions related to offences, above all in respect of grouping the most serious customs offences into a single article (article 265), which carry with them the pronouncement of the protective measure of confiscation of goods, as per article 271 of the Law. Besides this, this law also defines numerous actions that constitute violations of the substantive provisions of the Law, specifying actions that have already been prescribed and that constitute the substance of an offence, with amendments in the references to specific articles of the law, as well as increases in prescribed fines.

We draw attention to the most significant amendments in Part Eleven of the Customs Law - Customs Offences.

**1. Article 265 of the Law** specifies offences that carry with them a monetary fine in the amount of one to five times the value of the goods (where the amount of the fine cannot exceed five times the amount of the highest fine that can be imposed and does not exceed the amount of 10,000,000 dinars).

Offences that were covered by the general wording of the previously effective article 265 paragraph 1 item 1 of the Customs Law are specified as follows:

- Bringing or attempting to bring goods into the customs territory of the Republic of Serbia in a concealed manner, and taking out or attempting to take out goods from the customs territory of the Republic of Serbia in a concealed manner;
- Bringing into the customs territory of the Republic of Serbia or taking out from the customs territory of the Republic of Serbia goods that are subject to prohibitions or restrictions, with the intention of avoiding the measures of customs supervision and customs control, in violation of the regulations governing the import or export of such goods, or without appropriate documents;

- Failure to take foreign goods out of the customs territory of the Republic of Serbia without delay, for which customs formalities have been completed upon exiting the customs territory of the Republic of Serbia;
- Failure to submit declarations for goods or part of goods of a commercial nature or goods for which import or export restrictions or prohibitions are prescribed;
- Bringing or attempting to bring goods into the customs territory of the Republic of Serbia through a border crossing at a time when the border crossing is not open for traffic or outside the border crossing, and taking or attempting to take goods out of the customs territory of the Republic of Serbia via a border crossing at a time when the border crossing is not open for traffic or outside the border crossing.

Besides this, **article 265 paragraph 1 item 1) of the Law** prescribes punishment for a person concealing the actual intention, objective or legal basis for disposing of declared goods, providing invalid documentation in declaring it, organizing and planning the performance of fraudulent deliveries, receipt or movement of declared goods or direct or indirect involvement in such activities, direct or indirect involvement in creating invalid customs, business, transport or other documentation related to declared goods, or in the use of such invalid documentation, unauthorized or intentional use of other persons' information for committing or creating conditions for committing fraud, acting with and disposing of declared goods, declaring or indicating a non-existent person as a recipient or a person whose identity or personal information were used without their knowledge and approval.

The descriptions of offences include offences as per the previously effective article 266 paragraph 1 item 1 of the Law, which carry a fine of one times to four times the amount of the customs duty for the goods used in committing the offence.

Also, as in the previously indicated case, a higher amount of the monetary fine is prescribed for acting in violation of substantive provisions of the Law with goods that are exempt from customs duty, which is an offence that is covered by the new item 9 of paragraph 1 of article 265 (previously article 266 paragraph 1 item 2).

**2. Article 266 of the Customs Law**, above all, prescribes offences that were previously included under article 267 of the Law, with increase in the prescribed monetary fine in the range from 50,000 to 1,500,000 dinars, to the range from 100,000 to 2,000,000 dinars, where in certain cases offences are specified in greater detail or offences are broken down separately.

**The greatest change is in the description of offences in the previous article 267 paragraph 1 item 2 and 3 of the Law**, that are now offences in article 266 paragraph 1 item 2 of the Law, which prescribe punishment for persons who file a declaration or a declaration for temporary storage, a declaration for re-export or request for issuing an approval or another decision, with incorrect or incomplete information stated in the declaration or with incorrect or incomplete information stated in the request.

Namely, previously it was prescribed that this is an offence only if the information is incorrect, or if false information results in payment of a lower amount of duty, or use of benefits or other rights, but now stating such information, where such information has no effect on the procedure related to a declaration or a request, is not considered an offence. It remains to be seen in practice which information the customs authorities will deem to be information that has no effect on the procedure related to a declaration or a request.

Another significant change in the previous description of an offence is the wording based on which it is considered that no offence had been committed if a person modifies or supplements information in a declaration or changes information in a request, before any activity is performed by the customs authority related to an action or oversight committed, or initiation of customs control. Although the said norm does not specify what customs control is involved, it can be expected that "customs control" will include all three types of control: preliminary control, control during customs clearance procedure and subsequent customs control.

Besides the aforementioned, **article 266 of the Customs Law now includes certain offences for which a fine was previously prescribed in a fixed amount as per article 268 of the previously effective Law**, for a person, as follows:

- For failing to keep documents or information;
- For failing to store goods for temporary storage in an area for temporary storage;

- For failing to keep records or not keeping records in a form approved by the customs authorities or for keeping incorrect or incomplete or untimely records;
- For failing to deliver goods or requested information to the destination customs office, for not delivering goods in an unaltered state or not delivering goods in line with measures pronounced by the authority in order to ensure identification of goods or for not observing other customs regulations related to transit procedure.

On the other hand, certain offences that carried a heavier fine and for which a monetary fine was prescribed of one to four times the value of the goods, are now qualified more leniently in article 266 of the Customs Law, relating to failure in transporting foreign goods or delivering them to a particular customs office or to another location designated or approved by the customs authority, or to a free zone.

It should be noted that the wording of article 266 of the Law gives rise to a dilemma in terms of actual situations in which particular offences could be committed. For instance, item 11 paragraph 1 article 266 prescribes that an aircraft or ship operator shall be fined who fails to notify a customs authority about the arrival of a ship or aircraft, with reference to article 117 paragraph 1 of the Law. Given that par. 2 and 3 of article 117 specify other forms of notification about the arrival of a ship or aircraft, with information in the information systems of ports and airports, the responsibility of the mentioned persons is questionable in situations in which the customs authority did not use available information, although such information was available to it.

Also, **item 20 paragraph 1** of the same article prescribes that a person shall be fined if they fail to deliver to the customs authority documentation required for applying regulatory provisions in a procedure for which goods are declared, if submission of such documentation is prescribed or if it is required for customs supervision, with reference to article 143 paragraph 2 of the Law. Given that article 150 of the Customs Law prescribes that a customs declaration is accepted, inter alia, only if it is accompanied by the prescribed documentation, the purpose and reason behind the fine is lost if a customs declaration is not accepted because the accompanying documentation had not been submitted.

**3. Article 267 of the Law** specifies that a customs offences for which a monetary fine is prescribed in the fixed amount of 200,000 dinars for an entity, 100,000 dinars for an entrepreneur and 30,000 dinars for a private individual, are offences for which a misdemeanor order is to be issued. The amount of the fine for an offence did not change for an entity and for an entrepreneur with respect to the previously prescribed amounts. This article covers offences for which a fine in a fixed amount could be pronounced previously, as well, with a more detailed description of the offence. Beyond are listed offences for which a fine in a fixed amount can no longer be pronounced.

**4. Article 268 of the Customs Law** specifies which offences can be subject to a fine in a fixed amount of 100,000 dinars for an entity, 50,000 dinars for an entrepreneur and 20,000 dinars for a private individual, under the condition that the customs value of goods that are the subject of the offence cannot exceed 1,000 euro, in the equivalent amount in dinars. Besides the increase in the amount of the fee prescribed by the previously effective Customs Law, the number of offences to which this provision applies is also narrowed.

**5. Article 269 of the Law** prescribes a fine of 30,000 dinars for a private individual who committed an offence as per article 266 paragraph 1 item 15 of the Law, where such individual fails to submit a declaration for goods of non-commercial nature and where the customs value of the goods that are the subject of the customs offence exceeds 1,000 euro, but does not exceed the amount of 3,000 euro, in the equivalent amount in dinars.

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