

Non-resident importers and the Attorney for Customs Procedures

November 2024

In brief

With the clarification of the definition of Importer of Record (IOR) under the Basic Circular to the Customs Act¹ came into effect on October 1, 2023, many importing companies are now finding they need to check to confirm whether they meet the requirements of IOR in light of their import supply chains and business models. In fact, some companies that had previously filed import declarations on their own as IOR have found that they no longer meet the requirements after the clarification was made. They've subsequently had to change the IOR to the non-resident company which owns the title of the imported goods and suddenly this non-resident IOR was placed in the position of having to file import declarations.

In this newsletter, we will look back on the clarification of the IOR definition and introduce the Attorney for Customs Procedures (ACP) programme, which is required for non-resident companies to act as IOR, and its operational improvements, as well as relevant services.

In detail

1. Background and contents of clarification of the definition of IOR

In response to the expansion of e-commerce transactions, concerns about customs valuation non-compliance (where appropriate customs duties were not paid due to understatement of customs value) have been increasing in regards to the import declaration of mail-order goods. Accordingly, the customs authorities introduced the following series of measures in 2023 with an aim to reinforce fair taxation:

- Amended and clarified the definition of an IOR.
- Explicitly specified the importer's address and name in the provision for items to be declared under the Customs Act, in order to facilitate the application of the penalty clause for false declaration to the case of IOR impersonation.
- Obligated the IOR to specify the relationship with ACP in the ACP notification form and to submit the relevant contract(s), to ensure the appointment of an ACP who understands the actual circumstances surrounding the importation.
- Enable customs authorities to designate a domestic related party of the IOR as the attorney in cases where the non-resident IOR does not respond to the request from customs authorities regarding the ACP notification by the deadline.

The clarification of the IOR definition mostly affects imports based on sales transactions where a buyer located in Japan is not involved (imports that are not based on import sales transactions). Customs authorities further clarified IOR by listing up the specific case where the businesses can act as IOR.

¹ Customs and Trade News 'Clarification of the definition of Importer of Record under Customs Act' (2023/10/18)

<https://www.pwc.com/jp/en/taxnews-customs/assets/wms-20231018-en.pdf>

The IOR is defined as below.

IOR clarified in the Basic Circular to the Customs Act

- (1) Where importation of goods is based on an import sales transaction, the IOR is, the consignee indicated on the invoice (or bill of landing, etc. where there is no invoice) for cargo imported through normal import transactions, in principle.
- (2) Where importation of the goods is not based on an import sales transaction, the IOR is:
 1. The person who, at the time of the import declaration, has the right to dispose of the imported goods after release of goods
 2. The person who acts for the purposes of import other than 1, such as:
 - a. a person who leases and uses goods imported under a lease contract
 - b. a person who sells in its own name commissioned goods imported for consignment sales
 - c. a person who processes or repairs goods imported for processing or repairing
 - d. a person who disposes of goods imported for disposal or destruction

In light of the above IOR definition, when a foreign company imports goods into Japan while retaining ownership of the goods, the foreign company needs to act as IOR because the company owns the right to dispose of the goods, unless company fall into one of the other situations of “a person who acts for the purposes of import”, such as toll manufacturers in Japan or those who import goods for consignment sales. In addition, a foreign company that does not have an address, a branch, nor a business office in Japan needs to designate a Japanese resident as the ACP to handle customs-related procedures such as declaring imports and receiving notifications from customs, when it act as the IOR (Article 95 of the Customs Act).

2. Operational improvement of the ACP programme

(1) Attorney for Customs Procedures

The ACP programme requires the IOR to designate a person residing in Japan as an ACP to handle customs procedures when a non-resident files an import declaration. The specific roles of the ACP are to handle customs import and export declaration procedures, attend customs inspections, pay customs duties, receive, send, and submit documents between customs authorities and the non-resident IOR, and receive refunds.

A non-resident IOR must designate an ACP and notify customs before filing an import declaration. The following four documents are required when notifying an ACP with customs authorities:

- i. A power of attorney from the non-resident IOR to the ACP
- ii. A copy of the non-resident IOR's business registration or ID
- iii. A copy of the ACP's business registration (certificate of all historical matters)
- iv. Import trade flow diagram

(2) Operational improvement on the ACP programme

Along with the clarification of IOR definition, improvements were also made to the ACP programme in 2023 and 2024, in order to facilitate appropriate import declarations and ACP notification. Specifically, submission of the ACP notification process was simplified, and the duty payment procedures was improved. Regarding payment procedures for imports by non-resident IORs, the use of the ACP's real-time account, which allow the ACP to utilize automatic duty payment, started to be in operation from 2024. Since the bank accounts for automatic payment can only by Japanese bank accounts, it was difficult for non-residents who did not have a Japanese back account to enjoy the automatic payment before use of the ACP's account is allowed.

| Target of improvement | Effective date | Before the Change | After the Change |
|---|----------------|--|---|
| ACP notification submission process | 2023/10/1 | Notification is required to be submitted <u>to each customs office where import declarations are submitted</u> | Indicate the import destination customs offices on the notification and submit it <u>to any one of the customs offices</u> , it will be valid for multiple customs office |
| Automatic payment of duties etc. through real-time account transfer | 2024/9/15 | <u>Real-time account of the ACP cannot be used</u> for payment of duties/taxes of non-resident IOR | <u>Real-time account of the ACP can be used</u> for payment of duties/taxes of non-resident IOR |

3. Non-resident import and ACP related service by PricewaterhouseCoopers WMS Pte. Ltd.

A non-resident company that wishes to import goods and materials procured from overseas in order to do business in Japan needs to appoint an ACP and notify Japan Customs in advance. It is also necessary for a non-resident IOR to discuss and agree with the ACP on how to carry out the import procedure. We can assist foreign businesses to proceed with customs procedures in Japan as the ACP and provide comprehensive support from designing of non-resident importer supply chains to support in communication with the customs authorities.

| Examples of our services | |
|---|---|
| IOR consideration and assessment | <ul style="list-style-type: none"> ● Verify requirements as an IOR based on the business model ● Guide the necessary customs procedures and tax payment methods if necessary |
| Submission of ACP notification | <ul style="list-style-type: none"> ● Collect documents required for the customs notification from the IOR ● Draft and check the notification based on the power of attorney ● Communicate with customs authorities including inquiries from customs authorities regarding the notification |
| Assist customs import declaration and related procedures as the ACP | <ul style="list-style-type: none"> ● Provide support in communication with customs authorities in Japan ● Provide support in HS classification and support from customs valuation perspective ● Align with customs brokers ● Provide guidance on import and export related laws and regulations ● Monitor and maintain import record |

The takeaway

We are of the view that the number of cases where non-residents need to become IOR has been increasing due to clarification of the IOR definitions the Basic Circular to the Customs Act. With the diversification of business, non-residents importer issues are becoming more common these days. In this context, the improvement of customs procedures related to the ACP is a welcome development. Companies engaging in import trade need to ensure customs compliance for a resilient supply chain and smooth logistics, while keeping in mind expected future improvements and risks in customs and trade area.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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E-learning

PwC Tax Japan launched a new e-learning program called Tax Academy in October 2022, to support those wishing to develop their skills in the international tax field. For tax professionals outside Japan, the 'Introduction to Japanese taxes' series within Tax Academy provides a basic outline of the Japanese tax system, including corporate tax and consumption tax, and covers key points of international tax practice in English.

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