

SWISS CUSTOMS CRIMINAL LAW

IMPORTING HIGH-VALUE GOODS

FROM ABROAD



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I. EVASION OF CUSTOMS DUTIES: CONSEQUENCES

- 1 If an individual knowingly or negligently seeks to circumvent the payment of customs duties, they may be subject to a fine of up to five times the amount of the evaded duties. This encompasses non-declaration, concealment, or incorrect declaration of goods, as well as the procurement of an unlawful customs advantage for oneself or another party. In aggravated circumstances, the maximum fine may be augmented by half, and the possibility of a custodial sentence of up to one year exists.
- 2 Aggravating circumstances, as defined, encompass the recruitment of one or more individuals for a customs offense and the habitual or commercial perpetration of such crimes.

II. DEFENSE STRATEGY

- 3 It is crucial to analyze the case's specific circumstances in criminal defense, considering the relevant laws and regulations. Understanding the elements of the alleged offense and the potential penalties is essential for building a solid defense. Additionally, identifying any mitigating factors or potential defenses based on the law and the case facts is important. It is also essential to ensure that search and seizure procedures and any evidence collection are conducted per the law to safeguard the rights of the accused. Working with a knowledgeable attorney who can provide legal counsel and representation is vital in navigating the complexities of criminal defense.

III. INTERPRETING PROFESSIONAL AND HABITUAL CONDUCT

- 4 In the Customs Act (Zollgesetz) context, professional activity is to be construed analogously to the provisions outlined in the Swiss Criminal Code (CC). According to the established jurisprudence of the Federal Supreme Court, the concept of professional conduct is ascertained based on factors such as the temporal and material resources allocated by the offender to the criminal activity, the frequency of individual acts within a specific timeframe, and the income sought and obtained, collectively indicative of the offender's engagement in the criminal activity as a profession (BGE 116 VI 319, p. 329).
- 5 Regarding habitual conduct, the Federal Supreme Court has stipulated that two prerequisites must be fulfilled: firstly, the offender must have repeatedly committed the punishable act, and secondly, the recurrent commission of the offense should reveal a propensity to engage in the criminal act. Habitualness cannot be inferred from a first-time repetition, although a high frequency of repetitions is not necessarily a prerequisite.

IV. AUTHORIZATION FOR DISCRETIONARY FINES AND PROSECUTIONS IN BUSINESS CASES

- 6 Suppose a fine of no more than CHF 100,000 is possible, and investigating the persons liable to prosecution would require investigative measures disproportionate to the penalty imposed. In that case, the authority can refrain from prosecuting these persons. Instead, they may order the business to pay the fine, ensuring a fair and balanced legal process.

V. PENALTIES AND OFFENSES RELATED TO TAX EVASION AND IMPORTATION OF GOODS

- 7 Any individual who intentionally or negligently fails to declare, incorrectly declares, or conceals goods during import or provides false or incomplete information during an official audit or administrative procedure to establish a tax claim or tax abatement is committing an offense against the state. Additionally, attempting to commit tax evasion is also considered an offense. The penalty is determined by applying Article 106, paragraph 3 of the Swiss Criminal Code (CC), and Article 34 CC may be used by analogy.
- 8 Suppose the tax advantage obtained by the act exceeds the threatened penalty and the offense was committed intentionally. In that case, the fine may be increased to a maximum of two times the tax advantage.
- 9 In aggravating circumstances, the maximum penalty for the offense may be increased by half, and a maximum custodial sentence of two years may be imposed. Aggravating circumstances include soliciting one or more persons to commit an offense against VAT law and committing offenses against VAT law for commercial gain.

VI. FORGERY OF DOCUMENTS

- 10 Anyone who, to gain an unfair advantage for themselves or someone else under federal administrative law, or of harming the government's property or other rights, forges or alters a document or uses another person's genuine signature or handmark to create a false document, or uses such a document to deceive, is punishable by imprisonment for up to three years or a fine. The same punishment applies to anyone who deceives an administrative authority or a person of public trust into falsely certifying a fact relevant to federal administrative law and to anyone who uses a document obtained in this manner to deceive an administrative authority or another party. This law also applies to foreign documents.

VII. SEARCH AND SEIZURE

- 11 The search and seizure procedures are outlined in Articles 48, 49, and 50 of the VStrR (Swiss Administrative Criminal Procedure Code). According to Article 48, dwellings, other rooms, and enclosed properties directly connected to a house may only be searched if it is likely that the accused is hiding there, if some items or assets can be confiscated, or if there are traces of the offense located there. The search of an accused individual must be conducted by a person of the same sex or by a doctor if necessary. A written order from the director or head of the involved administration is required for the search, except in cases of imminent danger, where the investigating officer may search their initiative if a warrant cannot be obtained in time.
- 12 Article 49 outlines the implementation of the search procedures, which includes the requirement for the investigating officer to identify himself before the search begins. The owner of the premises must be informed of the reason for the search and present during the search, with

exceptions made for cases of imminent danger or with the owner's consent. Additionally, an official designated by the competent cantonal authority or a member of the municipal authority must be present during the search to ensure that the measure stays on course. Searches on Sundays, public holidays, and at night may only occur in critical cases and the event of urgent danger, and the search minutes must be recorded immediately in the presence of the parties involved.

- 13 Article 50 specifically addresses the search for papers, emphasizing the importance of respecting private secrets and protecting official secrecy and secrets entrusted to various professionals such as clergymen, lawyers, notaries, doctors, and pharmacists. The document holder should be allowed to express their views on the contents before the search. If there are objections, the records shall be sealed and stored, with the admissibility of the search to be decided by the Appeals Chamber of the Federal Criminal Court if necessary.

VIII. CONCLUSION

- 14 In conclusion, Swiss law regarding the importation of high-value goods from abroad is comprehensive. It imposes significant penalties for offenses such as tax evasion, document forgery, and customs duty evasion.
- 15 Understanding the intricacies of these laws and the potential consequences is imperative for individuals and businesses engaged in international trade.
- 16 For those facing allegations or charges under these laws, seeking legal counsel and understanding the defense strategies is essential. Additionally, adherence to search and seizure procedures and evidence collection by the law is crucial to safeguarding the rights of the accused.
- 17 Overall, navigating the complexities of these legal provisions requires careful consideration and expert legal guidance.