

Resource Utilization Support Fund

The regulation regarding Resource Utilization Support Fund (RUSF) is the Decree no. 88/12944 on Resource Utilization Support Fund. According to this legislation, subjects of resource utilization support fund are loans and imports on credit. As per this Decree, collection of the RUSF applied to importation depends on the payment type of that importation. RUSF deduction rates applied so far have been amended by various Communiqués and Council of Ministers' Decisions; as of 13.10.2011, the rate has been increased to 6%.

One of the controversial issues about resource utilization support fund is the elements forming the basis of the fund. Communiqué series no. 6 promulgated for resource utilization support fund states that the resource utilization support fund deduction rates applied to importation shall be calculated on the "import amount", but it has not clearly defined what this import amount actually refers to. On the other hand, in Circular no. 2011/16 regarding RUSF, the term "cost of goods" has been used instead of "import amount".

Another controversial issue about the RUSF applied in importation is whether or not this fund may be treated as a customs duty. However, the disposition letter no. 20401 dated 02.10.2012 recently promulgated by the General Directorate of Customs put an end to the controversy. According to this regulation, it is concluded that RUSF should be regarded as an additional financial liability at importation and therefore the regulations in the Customs Law regarding statute of limitation, objection period and the authority for objections should be taken as reference.

Another significant point regarding the issue is the controversy that arose as a result of the promulgation of the Circular "RUSF liability of the companies located in free zones" no. 2011/16 by the General Directorate of Customs on 18.03.2011. This Circular states that in order to treat the importations from the companies related by shareholding and branches located in free zones as importations with advance payment, i.e. in order not to apply RUSF deduction, both the payment made to the actual exporter abroad and the payment made to the free zone from Turkey must be completed before the beginning of the customs liability and this situation must be substantiated with the documents submitted to the relevant customs administration by the importer firm. Furthermore, the procedure has been amended for the manufacturing companies having an industry registration certificate and operating in free zones; accordingly, it has been stated that RUSF deduction shall not be applied to the importations with advance payment made from these firms (for goods whose customs tariff statistics position has changed). We have observed that the arrangement introduced by this Circular is not included in the Council of Ministers' Decision creating RUSF nor the secondary regulations issued on the basis of this decision. In this regard, we are of the opinion that Circulars no. 2011/5 and 2011/16 are contrary to law in terms of authorization.

The latest development about the RUSF collected in importation is the Circular no. 2013/6 promulgated for secondary products and products under the temporary importation regime. According to this Circular, if a customs liability arises under the inward processing regime, in case secondary processed products are derived and these secondary products are released for free circulation, RUSF deduction shall be applied when customs liability arises for the imported goods and if declaration with exceptional value is filed during temporary importation (following the deadline for the submission of the complementary declaration to the customs administration).

Our article has discussed the legislative provisions about the RUSF applied in importation and some deficiencies in practice that arise in the scope of these provisions. We consider that these deficiencies result from the fact that the legislation about RUSF consists only of related decisions, communiqués, circulars and disposition letters and there is not any law which can discuss and evaluate the regulations about this fund with all its aspects.

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