China Tax Alert

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The Chinese Government Introduced New Policies to Regulate Cross-Border E-Commerce Retail Import Business and the Imported Articles

Laws and regulations discussed in this issue:

- The Ministry of Finance, the National Development and Reform Commission, the Ministry of Industry and Information Technology, the Ministry of Agriculture, the Ministry of Commerce, the General Administration of Customs, the State Administration of Taxation, the General Administration of Quality Supervision, Inspection and Quarantine, the China Food and Drug Administration, the Endangered Species Import and Export Management Office and the Office of Security Commercial Code Administration issued Announcement No. 40 on 6 April 2016
- The General Administration of Customs issued Announcement No. 25 and Announcement No. 26 on 7 April 2016

Background

The Chinese government recently issued the *Announcement on the Tax Policy on Cross-Border E-commerce Retail* (CAIGUANSHUI〔2016〕18) and the *Notice on Relevant Issues Concerning the Adjustment of Import Duties on Imported Articles* (SHUIWEIHUI〔2016〕2) to adjust the tax policies on cross-border e-commerce retail business and imported articles. In order to facilitate the implementation of the notices above and clarify some issues concerning actual operations in import and export, eleven ministries including the Ministry of Finance jointly issued the 40th Announcement in 2016 ("Announcement No. 40") and released the *List of Cross-Border E-commerce Retail Imported Articles* on 4 April 2016. The General Administration of Customs ("GAC") issued the 25th Announcement and 26th Announcement in 2016 ("Announcement No. 25" and "Announcement No. 26") on 7 April 2016 and released the *Classification Table of the People's Republic of China for Imported Articles, the Table of the People's Republic of China for Import Duties on Imported Articles and the Announcement on the Regulation of Cross-Border E-commerce Retail Imported & Exported Goods*. So far, the policy on import taxes, import operation, the process for goods return and the legal responsibilities that have been harassing the cross-border e-commerce industry have been clarified.

What the Announcements are about

1. Announcement No. 40 clarifies cross-border e-commerce retail imports will be subject to control list management. The list covers 1142 items with eight-digit H.S code. Most of them are consumer goods in demand in the domestic market and meet relevant regulatory requirements and can be imported via couriers and postal mails, including food and beverage, garments, household appliances,

cosmetics, diapers, children's toys, insulation cups. Importers of goods covered by the list are exempt from submitting related import license to the customs authorities but should go through inspection and quarantine procedures as the laws and regulations of the PRC require. Goods directly ordered from overseas are exempt from CIQ Clearance Notice (通关单), whereas, bonded goods purchased on line are subject to CIQ Clearance Notice (通关单） when entering bonded zones and are exempt from it when exiting bonded zones.

2. Announcement No. 26 has provided for enterprise management, customs clearance management, tax collection management, logistics control and return management and has abolished Announcement No. 56 issued by the General Customs Administration in 2014. The main contents are as follows:

- An enterprise engaged in cross-border e-commerce should submit the following materials to customs before undertaking business: a copy of its corporate business license, a copy of its organization code certificate (enterprises registered with unified social credit code do not have to provide the copy), a statement reflecting its organization code or unified social credit code, its Chinese name, its address registered with the industry and commerce authorities, the number of its business license, name of legal representative, type of ID card, ID card number, contacts for customs affairs, mobile number, telephone number, cross-border e-commerce website, etc.

- Before importation filing, e-commerce enterprises or platforms, payment agencies and logistics service providers should submit information about transactions, payment and logistics to the customs authorities via the cross-border e-commerce customs clearance service platform.

- Inbound and outbound couriers and postal enterprises can submit the information to the customs authorities on the behalf of e-commerce enterprises and payment agencies under the written promise that they assume liability for the authenticity of the information submitted;

- E-commerce enterprises or their agents should submit the Manifest for Declaring Imported and Exported Goods in Cross-border E-commerce Retail to the Customs Authorities of the PRC ("the Manifest"). Exportation can adopt "Release by Manifest, Declare through Consolidation", whereas importation by the mode of "Release by Manifest";

- In accordance with the requirements of the Announcement on the Tax Policy on Cross-Border E-commerce Retail (CAIGUANSHUI 〔2016〕18), goods imported under cross-border e-commerce regime are subject to customs duties, import-related VAT and excise duties. The dutiable value is the actual transaction price, including retail price, freights and insurance expenses.

- On-line shopper is the due taxpayer. E-commerce enterprises, e-commerce platforms and logistics service providers registered with the customs authorities are the withholding agents and pay the taxes on the behalf of shoppers. The withholding agents should declare imported goods to the customs authorities truthfully and accurately concerning the description of goods, specifications, H.S Code number, actual transaction price and related costs.

- Under the cross-border e-commerce mode, e-commerce enterprises and their agents are allowed to apply for returning goods. Returned goods should be transported to the sites of customs supervision in their original status within 30 days upon the release by customs. In this case, the corresponding import taxes shall not be levied, and the annual shopping quota of an individual should be adjusted;

3. In Announcement No. 25 issued by the GAC in 2016, the Classification Table of the People's Republic of China for Imported Articles and the Table of the People's Republic of China for Import Duties on Imported Articles which were released in Announcement No. 15 issued by the GAC in 2012 were adjusted in accordance with the notice (SHUIWEIHUI 〔2016〕2) issued by the Customs Tariff Commission of the State Council recently. The principles for article classification and dutiable value determination remain unchanged. The amendments took effect on 8 April 2016.

KPMG observations

- The laws and regulations recently introduced by the Chinese government demonstrated its efforts to address the core issues faced by the industry. The main uncertainties confronted by the cross-border e-commerce industry in the aspects of policies and operations have basically been resolved, which will help buttress the foundation for the healthy development of the industry;

- Regarding the coming impacts of the new regulations, the cross-border e-commerce may face new challenges such as product entry, customs clearance efficiency, overall tax burden and compliance management. As a result of the policies, the similar business environment is being built up for cross-border internet sales, domestic internet sales of imported articles and traditional sales channels. This may foster fair competition for and synergy among different business models.

- Enterprises engaged in cross-border e-commerce are not required to establish dedicated legal entity in special customs supervision zones. This is conducive to the comprehensive utilization of resources and investments in e-commerce. According to Announcement No. 26, enterprise not directly involved in cross-border e-commerce can engage couriers and postal enterprises to submit data to the customs authorities in order to complete clearance procedures. So there may be no need to set up a dedicated legal entity. In addition, even if it is necessary from commercial business perspective, the regulations have not expressly required that the entity must be established in special customs supervision zone;

- New regulations is offering a one-stop proxy channel. This is opening the door for overseas e-commerce platforms to expand their business in the China market. According to Announcement No. 26, couriers and postal enterprises can submit electronic information to the customs authorities on the behalf of e-commerce enterprises and payment agencies under the written promise that they accept liability for the authenticity of the information submitted. Therefore, overseas e-retailers may not have to set up their own business entities in China;

- The feasibility and actual impact of the three Announcements appeal further attention. Especially, the exceptions and opaque requirements on inspection and quarantine in the control list and the detailed requirements related to taxation may have unpredictable impacts;

KPMG's recommendations

- Enterprises in the industry should study the newly introduced regulations based on their own business cases and assess the impact in terms of costs, operational efficiency, quality of services and compliance risks. They should develop or adjust business models and strategies according to the trend of the global e-commerce, the direction of macro policies and their own goals in the medium and long run;

- Looking forward, the room of policy fine-tuning still exists. Enterprises should pay close attention and had better make forward-looking judgments for proactive actions. When necessary, it is advisable to communicate with the authorities or seek the assistance from professional firms;

- The new policies have set up higher pars for the accurate declaration which are similar to those for general trade import. Enterprises should attach due importance to it and establish internal control systems and supervision processes to avoid the impact on themselves or consumers as a result of non-compliance;

- There are still some uncertainties regarding the limitation of cities to conduct import business and regulations on the importation of food or cosmetics. Enterprises can consult the authorities or seek professional advise.

- The regulations took effect on April 8, covering various import modes and through different customs operation cites. This may impact inbound and outbound tourists, imported articles and cross-border e-commerce retail import. Government authorities, enterprises and individuals should be prepared for it;

- The impact of the new policies on export is not addressed due to limited space. If necessary, please contact KPMG Advisory (China) Co., Ltd.

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