

# China Tax Alert

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## China Customs Issued the Interim Administrative Measures on Advance Ruling

### Regulations discussed in this issue:

- Interim Administrative Measures on Advance Ruling (General Administration of Customs Order No.236)

### Background

On 26 December 2017, the General Administration of Customs (“GAC”) issued the Interim Administrative Measures on Advance Ruling (General Administration of Customs Order No.236, “the Administrative Measures”), which will come into effect on 1 February 2018.

### Summary of the Administrative Measures

#### Eligibility for advance ruling applications

Applicants shall be foreign trade operators registered with China Customs. In addition, applicants shall only apply for advance ruling on customs affairs in relation to their own foreign trade activities.

#### Customs affairs on which an application for advance ruling can be made

- Classification of goods imported or exported;
- Place of origins or qualifications as original products;
- Relevant factors of dutiable value and valuation methods for imported goods; and
- Other customs affairs prescribed by the GAC.

#### Time limit and in-charge customs office

An applicant shall apply to the customs office directly under the GAC at the place where it is registered for advance rulings three months before the scheduled importation and exportation. Under exceptional circumstances, an applicant that has valid reasons may apply for advance rulings within three months before the scheduled importation or exportation.

### Advance ruling decision

After the submission of an application for advance ruling, the in-charge customs shall review and make a decision on whether or not to accept the application within 10 days. Once the application is accepted, an advance ruling decision shall be issued within 60 days. Except for those involving business secrets, the customs office reserves the right to publish the rulings letters.

An advance ruling decision is valid for three years. In case of any changes to the relevant provisions of the laws, administrative regulations, customs regulations and announcements of the GAC on which the advance ruling decision is based, which affects the effectiveness thereof, the advance ruling decision shall be null and void automatically. Advance ruling decisions have no retroactive effect on goods imported or exported before these decisions come into force.

Any applicant that has objections to an advance ruling decision may apply to the GAC for administrative review, and may further institute administrative proceedings with the people's court in accordance with the law if it still has objections to the review decision.

### **KPMG observations**

The disagreement between the customs authorities and enterprises on valuation, classification, place of origin, etc. is a key factor that hinders the improvement of customs clearance efficiency and also triggers customs audits, duty repayments and administrative penalties. In practice, enterprises tend to seek for the customs authorities' verbal opinion in advance in order to mitigate compliance risks. However, due to the fact that the verbal opinions of customs officials are not legally effective and different customs officials may hold quite different opinions even on the same issue, this is not an effective approach to improving the predictability of import and export operations. In July 2015, the GAC launched the pilot program of administrative rulings on the classification of goods in Shanghai Free Trade Zone. Nevertheless, due to restrictions on the place of registration, product category etc. only a limited number of administrative rulings on classification have been issued by the GAC, which makes it difficult to meet the needs of importers and exporters.

With the Administrative Measures coming into force, the customs authorities, by means of advance ruling, can review the classification, place of origin, elements of dutiable value and valuation methodology prior to the import and export of goods, so as to reduce disagreement between enterprises and the customs authorities at the time of or after declaration, and improve the efficiency of customs clearance. In addition, since all customs offices directly under the GAC will be empowered to make advance ruling decisions under the advance ruling system whereas presently only the Classification Center under the GAC has the authority to make administrative rulings on classification of goods, more resources will be allocated to do the job and the applications made by enterprises will have a greater possibility of being accepted.

The advance ruling regime established by the Administrative Measures is another important initiative following the customs enterprise credit management system, new customs audit regime and national integrated clearance reform. It also represents a significant measure taken by the GAC to fulfil the Trade Facilitation Agreement entered into with the World Trade Organisation and a trailblazing regulation in the context of China's legal system in which statute laws predominate.

Given that these are only interim administrative measures, the customs authorities are expected to issue more detailed provisions regarding the following aspects to facilitate adoption by enterprises:-

#### 1. Responsible department

Though it is provided in the Administrative Measures that the customs office directly under the GAC at the location where the applicant is registered is responsible for making advance rulings, it has not been made clear which department of the local customs office will accept and review the application. Since customs affairs subject to advance ruling, e.g. the classification of goods, place of origin, relevant elements of dutiable value and valuation methods, will involve different departments of the local customs office, the exact responsible department needs to be clarified.

#### 2. Application materials

The Administrative Measures have not specified the materials required in an application for advance ruling. As a result, different requirements may be made by different customs offices. To facilitate the preparation of application materials by applicants and to promote transparency and consistency in advance ruling procedures, it is necessary that detailed provisions be issued regarding applications, import and export documents and other materials.

#### 3. Acceptance of applications

According to the Administrative Measures, a customs office shall make a decision whether an application for advance ruling will be accepted within 10 days following the acceptance of the application. The Administrative Measures have specified three cases where applications shall not be accepted. However, it is not clearly defined in the Administrative Measures whether applications can be rejected in other cases.

#### 4. Exceptional circumstances

It is provided in the Administrative Measures that under exceptional circumstances, an applicant that has valid reasons may apply for advance rulings within three months before the scheduled importation and exportation. However, the term "exceptional circumstances" is not defined in the Administrative Measures.

## 5. Relationship between the advance ruling regime and similar regimes

Besides the administrative ruling regime, other existing regimes that are similar to advance ruling in relation to pre-clearance review include customs pre-classification, customs pre-valuation, pre-determination of place of origin. The relationship between these regimes and the advance ruling regime, as well as the validity of relevant decisions made need to be further clarified.

Besides, enterprises are reminded to pay attention to the following aspects of the Administrative Measures:-

### 1. Eligibility of applicants

In the case that a customs clearance agent is engaged by an enterprise to perform customs declaration, the enterprise is eligible for submitting an application for advance ruling, while the agent is not.

### 2. Foreseeability of imports or exports

When an applicant applies for advance ruling, the customs authorities may require the applicant to provide copies of commercial contracts or letters of intent, the name of vessel, flight number and other materials and information as proofs that that goods are scheduled to be imported or exported after three months.

### 3. Advance ruling on the relevant elements of dutiable value and the valuation method for import of goods

An advance ruling decision is not a decision on the dutiable value itself but on the related to pre-clearance review. Therefore, an enterprise can apply for advance ruling on affairs such as the dutiability of royalties and the impact of a special relationship between the buyer and the seller on the transaction price. The amount of dutiable value is not within the scope of advance ruling.

Enterprises can assess their own customs affairs including classification, place of origin, relevant elements of dutiable value and the valuation methods for import of goods and may consider applying for advance ruling to reduce compliance risks. For instance, an enterprise that has a large amount of related party transactions and royalty payments can consider applying for advance ruling on the relevant elements of dutiable value and the valuation method, while importers of novel types of goods of which the classification is unclear may apply for advance ruling on classification.

KPMG will keep a close eye on the follow-up rules and regulations regarding advance ruling that may be issued by the GAC and the customs offices directly under it to better advise and serve import and export enterprises.

