

China Tax Alert

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The General Administration of Customs issues the new Measures for Implementation of the Customs Audit Regulations and enterprises should take note of its key content

Regulations discussed in this issue:

- GAC issued the new Measures for Implementation of the Customs Audit Regulations of the People's Republic of China (Decree of the GAC No.230), which will go into effect on 1 November 2016 as the supporting regulations of the new Customs Audit Regulations.

Background

On 26 September 2016, the General Administration of Customs (GAC) issued the new Measures for Implementation of the Customs Audit Regulations of the People's Republic of China (Decree of the GAC No.230, hereinafter referred to as the Measures). The Measures will go into effect on 1 November 2016 as the supporting regulations of the new Customs Audit Regulations (hereinafter referred to as the Regulations). The Measures specify and refine various issues in the operation and implementation of the Regulations, which are of great guiding significance.

In this issue of China Tax Alert, we will clarify and analyse the key content of the Measures and the potential effect on the related enterprises and summarize the major issues and related suggestions with which the enterprises may be concerned, for the reference of import and export enterprises.

Main contents

Compared with its previous version, the Measures adopt great adjustments, including the following:

[1 The Measures add some content related to self-disclosure and specify its treatment provisions](#)

Chapter IV of the Measures defines the situations, requirements and treatment of self-disclosure. The treatment principles are as following:

- A company who commits a violation of the Customs supervision provisions shall be given a lighter or mitigated administrative punishment.
- Where the above violation is of a minor illegal implication, and the violator promptly puts it right and causes no harmful consequences, no administrative penalty shall be imposed.
- Where a company self-discloses the related information and pays back the related import taxes, Customs may reduce or eliminate his late payment surcharge.

2 The Measures add the specified provisions in relation to introducing third-party agencies

It matches with the related requirements of the new Regulations. Based on the Regulations issued at an earlier stage, the Measures adopt more detailed provisions, specifying:

- Customs may entrust professional accounting and tax organisations etc. to give professional comments which, upon the recognition of Customs, may be regarded as evidence materials to the facts ascertained in the Customs Audit.
- Professional comments of professional accounting, tax organisations etc. entrusted by the auditee may serve as reference for the Customs Audit.

3 The Measures add provisions about Customs Audit jurisdiction

The Customs Audit shall be conducted by Customs in the place of registration of the auditee. Where the place of registration of the auditee is different from the place of goods declaration or the importing or exporting places, the Customs Audit may also be conducted by Customs of the goods declaration place or the importing or exporting places. The GAC may designate or organise District Customs at the lower level to conduct Customs Audit across different Customs districts. District Customs may designate or organise Customs Houses at the lower level to conduct Customs Audits in its Customs district. The jurisdiction model of “taking the registration places as major focuses, importing and exporting places as secondary and specific places as supplementary” is determined primarily.

4 The Measures add some Customs treatment measures adopted against irregularities:

- Customs may, in accordance with the related regulations, adjust the credit ratings of those who do not cooperate with Customs to carry out work according to the Regulations.
- Where Customs discovers that an auditee fails to keep or prepare accounts books, or removes, conceals, tampers with or destroys the accounts books, Customs shall report to the local Bureau of Finance of the People’s Government above county level at the location of the auditee.

5 Other related amendments:

- Adding the actual consignee or consigner of the imported or exported goods as auditee.
- Revising “the Customs Audit period of tax-free and tax-reduced imports and exports” to “within the Customs supervision period and three-year period thereafter”. This amendment specifies the Customs Audit period to be within three years from Customs clearance of imports and exports or within the Customs supervision period for bonded goods, tax-exempt and tax-reduced imports and exports and the three-year period thereafter. The retention period of the documents and related materials is the same as the above period.
- Adding some content related to trade investigations. Customs may carry out trade investigations and collect information from related associations, governments and enterprises.
- Adding some provisions for checking and copying documents in the Customs Audit. The Measures define, at length, the procedures and other requirements and specify the enterprises’ obligations for cooperative assistance.
- Adding some provisions about suspending the Customs Audit under particular circumstances. Where the auditee is missing or is terminated and there is no successor for his rights and obligations, the Customs may suspend the Customs Audit.
- Adding treatment against the refusal of signing for the Customs Audit conclusions. Customs may retain the documents as if they were signed for in accordance with regulated procedures and conditions.

KPMG observations

The new Measures, being of positive significance in regulating the law enforcement of the Customs and protecting the lawful rights and interests of the enterprises, are refinements and supplementary to the new Regulations. The enterprises need to pay attention on the following issues in the future:

1 Self-disclosure

On the basis of the fundamental provisions of the Regulations, the Measures set up detailed provisions for self-disclosure and especially refine and specify the treatment principles, which solves the problem of lacking a basis for law enforcement and specific regulations of the enterprises' self-discipline management and also provides lawful protection for self-disclosure and standards for practical operation. The enterprises can actively launch and use self-discipline management methods based on their actual situations to improve their trade compliance.

2 Third-party agencies involved in the Customs Audit

During recent years, Customs have made great progress to engage the assistance of social resources in its administrative process. Customs in various regions have conducted many trials introducing third-party organizations to assist with the Customs Audit. The Measures specify these principles, requirements and effects. The enterprises can take advantage of the professional firms in completing the Customs Audit. We learn that Customs will launch corresponding supporting regulations in this regards subsequently. KPMG will pay constant attention to this issue.

3 Enterprises' responsibilities for cooperation.

The enterprises should actively cooperate with Customs in the Customs Audit, summiting the related documents and materials. If they do not act in cooperation with the Customs as stated in the Regulations, and do not make corrections within the stipulated period, their credit ratings may be affected. If their treatment of accounts books does not comply with the related requirements, Customs shall report this to the local Bureau of Finance, which may result in other negative effects on the enterprises. The enterprises should enhance their capability for accounts books management and consult professional advice on how to improve their accounting systems when necessary.

4 A consignee or consigner as the auditee

The Customs may regard a consignee or consigner as the auditee and conduct extended Customs Audit under circumstances when the foreign trade agent or the "intermediary" only performs a function of formality and the consignee or consigner dominates the actual trade. It is possible that these kind of enterprises may need to enter into the Customs Audit at later stage. We suggest that they put more emphasis on regulating their operation and performing internal standardized management in advance.

5 Documents and related materials.

The Measures specify the retention period of the documents and related materials, which is within three years from Customs clearance of imports and exports or within the Customs supervision period for bonded goods, tax-free and tax-reduced imports and exports and the three-year period thereafter. We suggest the enterprises strengthen their record keeping to avoid any effect on the Customs Audit due to the retention of the documents and related materials.

Services that KPMG provides

Suggesting the related import and export enterprises make preparations to react in the developing and changing Customs Audit environment, KPMG provides services in relation to:

- Assisting enterprises to enhance their Customs compliance and internal control management, including customs clearance operation, import and export tax payment, management of tax-exempt and tax-reduced equipment and foreign exchange management;
- Assisting with the application and certification of high credit rating enterprises (AEO, etc.) and raising the credit ratings of enterprises which include pre-assessment, risk improvement, materials preparation, application filing, follow-up tracking and certification assistance;
- Assisting the enterprises to carry out a “health check” for the importation and exportation business, identifying and assessing the potential risks, optimising internal management and constructing risk control mechanism;
- Assisting the enterprises with their self-discipline management and providing professional solutions;
- Assisting the enterprises to cooperate with Customs in the Customs Audit and providing professional assessment reports in relation to their importation and exportation business.

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