

China Tax Alert

Issue 2, February 2018

China Customs Issued an Announcement Regarding the Implementation of the PRC Customs Provisional Administrative Measures on Advance Ruling

Regulations discussed in this issue:

- Announcement Regarding the Implementation of the PRC Customs Provisional Administrative Measures on Advance Ruling (General Administration of Customs Announcement [2018] No.14)

Background

On 31 January, 2018, the General Administration of Customs (“GAC”) issued an Announcement Regarding the Implementation of the PRC Customs Provisional Administrative Measures on Advance Ruling (General Administration of Customs Announcement [2018] No.14, hereinafter referred to as “the Announcement”), which comes into effect from 1 February 2018.

Summary of the Announcement

The Announcement further clarifies some details in the Provisional Administrative Measures on Advance Ruling (“the Measures”), including:

- Applicants of advance ruling should be the consignees of imported goods or the consigners of exported goods;
- Special cases in which advance ruling can be applied within three months before the scheduled importation or exportation:
 - Force majeure or regulatory changes; or
 - The applicant completes its registration with the customs within less than 3 months.
- The application for advance ruling shall be submitted via China e-Ports’ “Customs Affairs Communication System” (i.e. the QP system) or the “Internet + Customs” Platform;
- Advance ruling decisions will be published, except those containing trade secrets;
- Under the following circumstances, the Customs can terminate the advance ruling review process:

- Applicants apply to withdraw the application and have obtained the approval from the Customs;
 - Applicants fail to provide the documents or samples as requested;
 - The advance ruling decision cannot be made within the specified timeframe due to reasons caused by the applicants.
- The use of the advance ruling decisions in import and export declarations;
 - It is clearly specified in the Announcement that applications for pre-classification, valuation pre-examination, pre-confirmation of place of origin are no longer accepted;
 - Advance rulings for place of origin is made based on the H.S. codes provided by applicants. During importation, if the classifications of the imported goods are not in line with those in the advance ruling decision (“the Decision”) issued in the place of origin, such Decision will not apply;
 - The Announcement also defines the templates of relevant legal instruments.

KPMG Observations

The Announcement provides detailed specifications on issues to be paid attention to in the implementation of the Measures, as well as the templates of relevant legal instruments such as Advance Ruling Application Form and the Advance Ruling Decision. The Announcement has standardized the implementation of the Measures and made it more feasible.

Apart from the main body of the Announcement, KPMG hereby reminds companies to also pay attention to the templates of relevant legal instruments in the appendix, especially the template of and requirements on filling in the Advance Ruling Application Form.

- Fill in basic product information on the Advance Ruling Application Form for classification and attach relevant documents. Required information varies based on products of different categories. For machinery and electrical products, the key information would include function, application, structure principle, and performance indicators, etc. For chemical products, the more relevant information includes component, chemical structural formula, CAS No., processing techniques, appearance, and material safety data sheet (MSDS).
- Tick on the advance ruling items on the Advance Ruling Application Form for price. Items to be selected include whether relevant elements in the dutiable value (e.g. commission, brokerage fee, container fee, packaging fee, assists, royalty fees, freight insurance fee and etc.) are dutiable, whether special relationship exists as well as their impact on the transaction price, and applicable valuation method. It requires that the applicant have the expertise to determine the category of the payments the company makes, and at the same time understand basic customs valuation concepts, such as special relationship and transaction price.

In addition, before making an application for advance ruling for special relationship, the applicant should fully consider the potential impact of the advance ruling result on the company's transfer pricing. In the event that the advance ruling decision determines that the special relationship between the buyer and seller has affected the transaction price, the company may face with not only dutiable value adjustment by the Customs, but also the challenge from the tax authority regarding whether the company's transfer pricing methodology in related transactions is in line with the arm's length principle. An applicant is therefore advised to conduct an assessment in advance. Conversely, if the advance ruling decision determines that special relationship between the buyer and seller does not affect the transaction price of the imported goods, the result of the advance ruling can help the company prove to the tax authority that their prices in related transactions are in line with the arm's length principle.

- On the Advance Ruling Application Form for place of origin, fill in the agreements (a basis for the ruling), value of the goods, the categories and value of raw materials employed in the manufacturing process, manufacturing process, etc., The information is used to determine whether such goods meet the place of origin requirements under the relevant free trade agreement or preferential trade arrangement. It should be noted that advance rulings for place of origin only focus on the originating status or place of origin. Direct transportation issue that companies are concerned about is not within the scope of advance ruling.
- All three types of Advance Ruling Application Forms above contain a confidentiality statement. If the applicant does not want to have their Advance Ruling Decision published, they should tick on the corresponding box.
- The applicant can attach documents to the Advance Ruling Application form. The list of the attached documents should be shown on the application form. If the attachments are in foreign languages, Chinese translation shall be provided at the same time as is required by the Customs.
- Given that advance rulings are for planned imports and exports, the Customs may request commercial documents, such as invoices, contracts or letter of intent, to support the predictability of the imports or exports.

KPMG's Trade and Customs team has rich experience in goods classification, valuation and place of origin, and can help companies assess tax-related and license-related issues for the goods in the planned advance ruling application, such as classification, valuation and place of origin, and help companies prepare documents for submission, and make successful applications for advance ruling.

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