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Tax Analysis

New cross-border e-commerce policies announced

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The Chinese government recently announced several administrative and tax policies relating to cross-border e-commerce (CBEC) retail imports, i.e. direct internet (or other online network) purchases of goods by Chinese individual consumers from overseas retailers via Chinese e-commerce service providers:

- Bulletin [2018] No. 157, jointly issued on 20 November 2018 by 13 government agencies, including the Ministry of Finance (MOF);
- Notice Shang Cai Fa [2018] No. 486, jointly issued on 28 November 2018 by six government agencies, including the Ministry of Commerce (MOC), the National Development and Reform Commission (NDRC) and the MOF;
- Notice Cai Guan Shui [2018] No. 49, jointly issued on 29 November 2018 by the MOF, the General Administration of Customs (GAC) and the State Administration of Taxation (SAT); and
- GAC Bulletin [2018] No. 194 on 10 December 2018.

The new polices, which apply as from 1 January 2019, expand the qualified CBEC retail import system, adjust tax policies and enhance the CBEC import supervision system.

Background

Based on tax policies introduced on 8 April 2016, goods included on the "List of Imported Cross-border E-commerce Retail Goods" may be subject to a 0% tariff rate, and import VAT and consumption tax are levied at 70% of the statutory tax amount. To benefit from the tax-free treatment, a single transaction of an individual could not exceed RMB 2,000 and the amount under transactions on an annual basis could not exceed RMB 20,000.

As part of the government's efforts to drive the development of the CBEC industry, a transitional policy allowed retail imports to be treated as "personal use articles" until 31 December 2018, so that they could enjoy the preferential duty treatment, as well as the waiver of certain license or registration requirements.

The new policies adjust the transactional value threshold, expand the list of retail import products qualifying for CBEC treatment, and clarify the tax and supervisory policies for CBEC retail imports following the expiration of the transition period.

Highlights of the new policies

Transactional value and resale of imports

- The RMB 2,000 per transaction purchase threshold is increased to RMB 5,000 and the annual purchase threshold per person is increased from RMB 20,000 to RMB 26,000.

- If the customs value of a single product exceeds the single transaction limit, but is less than the annual transaction threshold, the item still can be imported via the CBEC retail channel. However, customs duties, import VAT and consumption tax will be levied in full and the transaction amount must be included in the total annual transaction amount.

- CBEC retail imports may not be resold on the domestic market.

CBEC retail import goods list (2018 Edition)

- Imported retail products included on the CBEC retail import goods list qualify for the CBEC retail import tax policies. The 2018 Edition of the list expands the number of tariff lines to 1,321, with 63 newly added HS codes that include products such as wine, beer, fitness equipment, etc., i.e. items that are in high demand by Chinese consumers.

Supervision policy

- CBEC retail imports will be regulated as articles imported for personal use. This category of goods is not subject to the first-time import license, registration or record filing requirements, although exceptions apply when the import involves goods from areas suffering from epidemics (and for which import is suspended) or the emergency disposal of goods due to serious quality or safety risk issues.

  The application of these policies is expanded from 15 pilot cities to 22 CBEC pilot zones (37 cities and areas including Beijing, Chongqing, Guangzhou, Hangzhou, Kunming, Shanghai, Xi'an, etc.).

  In areas other than pilot areas, CBEC retail imports under the direct purchase import mode will be regulated according to the rules governing personal use articles. CBEC retail imports under the online shopping bonded import A mode (Customs Supervision Code 1239) will be regulated under the rules that apply to products entering special customs zones or areas, and when products exit such special customs zones or areas, CBEC retail imports will be regulated based on the rules applying to personal use articles.

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- The new policies define the responsibilities of government agencies, CBEC enterprises, platform operators, service providers and consumers:
  - CBEC enterprises have primary responsibility for ensuring the quality and safety of goods, protecting consumer rights, and creating and maintaining systems to manage product quality at various stages of the supply chain.
  - Cross-border e-commerce platform operators must register with the authorities to conduct business activities in China, be subject to supervision by the relevant authorities and cooperate with the authorities in any post-transaction administration and law enforcement measures and assume responsibility for compensating consumers for any damages before addressing its own claim with the seller.
  - Domestic service providers engaged by CBEC enterprises are responsible for providing accurate and genuine declarations.
  - Consumers are the taxpayers for CBEC retail import purposes.
  - Market regulators should enhance supervision of recalls of retail imports under CBEC. CBEC enterprises will be managed through the Customs credit management system and the customs authorities will apply different clearance measures based on the credit rate of the enterprise.

A grace period to comply with the above rules will apply until 31 March 2019.

The GAC Bulletin [2018] No. 194 provides more guidance on the supervision of areas such as the management of CBEC enterprises, customs clearance, tax collection, inspection and quarantine requirements, logistics and returns of goods.

Comments

The rapid development and upward trajectory of CBEC business remains a priority on the government's agenda. This is illustrated by President Xi's announcement at the first China International Import Expo that the country will expand imports and accelerate the development of CBEC business, as well as the introduction of the new e-commerce law that became effective on 1 January 2019. The law confirms that e-commerce operators that are involved in CBEC must comply with the rules and regulations relating to the supervision and administration of imports and exports, and the law provides the legal basis for the implementation of CBEC policies.

The new policies that expand the pilot areas and the scope of listed products and raise the purchase threshold should help to satisfy consumer demand by expanding the footprint of CBEC business, and accordingly, facilitate the steady growth of CBEC business and retail sales.

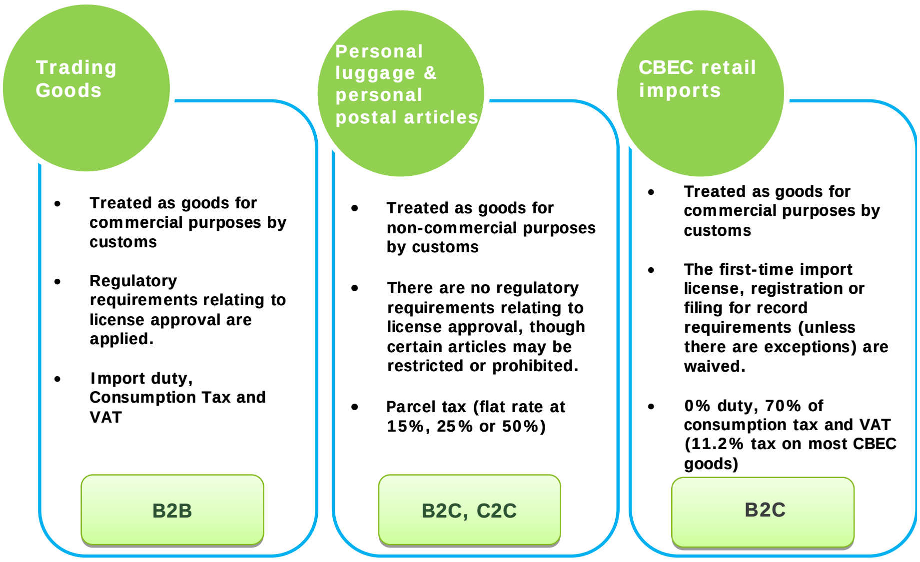
The policies clarify the general supervisory principle for CBEC retail imports. Unlike general trade, CEBC retail imports mainly serve to provide diversified and quality products to domestic consumers under B2C model. The products must be sold directly to consumers and may be used only for personal purposes. The government has confirmed that CBEC retail imports should be regulated as personal use items so they fall outside the scope of licensing or registration requirements, which is welcome news for affected businesses, as it provides regulatory and administrative certainty, thus enabling CBEC enterprises to develop a longer-term business strategy.

The new CBEC policies define the roles and responsibilities of government agencies, CBEC enterprises, platform, service providers and consumers. It is foreseeable that the supervision during and after transactions will be reinforced, quality-related risks will be better controlled, and all entities will have clear standards to follow.

Suggestions

Opportunities

CBEC retail imports may be able to enjoy more preferential policies relating to tax rates, waivers of certain import licenses, registration and filing requirements as compared to the requirements applicable to items purchased via general trade. The following table offers a brief comparison of general trade imported goods, mail-order goods and CBEC retail imports:



The new CBEC policies create opportunities for foreign companies that would like to bring their products into the Chinese market.

It should be noted that the CBEC preferential tax policies are applicable regardless of where the goods originate.

Business model evaluation

There are two types of business models for CBEC retail imports, with each having pros and cons:

- **Bonded importation mode**: Goods are temporarily stored in a bonded warehouse in China. After a consumer places an order, customs clearance and delivery is carried out immediately from the bonded warehouse. This mode entails a large inventory, but the goods are delivered quicker. Pilot cities or areas for CBEC business would adopt the "Online shopping bonded import mode" (Customs Supervision Code 1210), and other cities with Customs special supervision zones or venues could adopt "Online shopping bonded import A mode" (Customs Supervision Code 1239);

- **Direct purchase import**: After a consumer placed his/her order, overseas suppliers ship the goods to China via post or express delivery services, the goods clear customs, and then are delivered to the consumer. This mode does not require domestic inventory but is more complicated than bonded importation because of the delivery arrangements. Customer satisfaction also may be impacted depending on the efficiency of the international transportation mode.

Compliance

Taken together, the CBEC policies and the new e-commerce law demonstrate the Chinese government′s commitment to support CBEC trade. The grey channel of "Daigou"[1] is not encouraged. The government is implementing stricter regulation of non-CBEC activities (e.g. a domestic e-commerce operator running a foreign commodities business recently was sentenced to prison for 10 years for smuggling activities).

Although the regulatory environment appears to be becoming more relaxed, CBEC operators should take steps to ensure they comply with the applicable rules. For example, affected companies should consider the following actions to help them fully utilize the benefits of the CBEC policies:

- **Conduct assessments on the feasibility of adopting the CBEC business model;**
- **Review current contracts and trade arrangements from a compliance perspective and make plans to restructure the supply chain, if necessary;**
- **Enhance internal controls to comply with China′s customs credit management requirements and make full use of authorized economic operator (AEO) status to improve the efficiency of the customs clearance procedures; and**
- **Closely monitor future developments and seek professional advice, as needed.**

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[1] "Daigou" refers to selling of foreign commodities by domestic dealers without legal import documentation such as a Customs Declaration Form. The commodities usually are obtained via postal parcel or a smuggler. In China, individuals can purchase foreign commodities that are delivered via post or carried as personal luggage via international transportation to China and only allowed for personal use following entry into China. If such commodities are resold, the activity could be considered illegal or smuggling. For commercial distribution purposes, the seller should declare the imports to Customs via general trade rather than via post or carried as personal luggage.

Tax Analysis is published for the clients and professionals of the Hong Kong and Chinese Mainland offices of Deloitte China. The contents are of a general nature only. Readers are advised to consult their tax advisors before acting on any information contained in this newsletter. For more information or advice on the above subject or analysis of other tax issues, please contact:

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