

Customs Tariff Law of the People's Republic of China

Background

Prevailing legal basis for China Customs' tariffs appraisal on import and export goods includes the Customs Law, the Regulation on Import and Export Duties, the Regulation on Origin of Import and Export Goods, and other administrative regulations and normative documents on tariff collection, customs classification, valuation, and origin etc. issued by the General Administration of Customs.

Stipulation of the Customs Tariff Law is in response to the principle set by the Legislation Law for having regulatory basis for taxation, including the basis for tax categories, tax rates and tax collection management. First draft of the Customs Tariff Law was published and publicly solicited for opinions on December 29, 2023. The second draft reflected the public opinions and was approved by the 9th meeting of the 14th Standing Committee of the National People's Congress on April 26, 2024, and was promulgated as an official law by Presidential Order No. 23. It will come into force on December 1, 2024.

Enactment of the Customs Tariff Law is of great significance for the development of foreign trade, expansion of institutional opening-up, and promotion of high-quality development. It is also an important measure to implement the reform of having taxation ruled by regulations.

Major changes compared to existing customs tariff regulations

Overall, the Customs Tariff Law keeps the existing tariff system, with the overall tariff burden remaining unchanged after implementation. Meanwhile, the Customs Tariff Law has upgraded the regulation hierarchy of tariff rules. The law stipulates the authority in-charge of adjusting tariff items and rates, and tax obligations under some new business models and trade patterns. It has been aligned with international high-standard economic and trade rules. It also improves the customs tariff management system, and elevates the mature experience and practices adopted by Customs in adapting to the development of international trade to a regulatory level. It has also updated some controversial and unclear provisions, as well as updated some provision to ensure the consistency with other tariff related regulations. The main changes brought by the Customs Tariff Law as compared to the existing customs tariff regulations are summarized as follows:

1. Standardize and clarify the adjustment authorities and procedures for tariff items and rates - the Standing Committee of the National People's Congress, the State Council, and the Tariff Commission of the State Council

Item	Provisions of the Customs Tariff Law	Provisions of the Regulation on Import and Export Duties
Adjustment of the MFN rates, tariff quota rates, and export tariff rates promised by the Protocol on the Accession of China to the WTO	To be proposed by the Tariff Commission of the State Council, reviewed by the State Council and decided by the Standing Committee of the National People's Congress	The Tariff Commission is responsible for the adjustment and interpretation of the tariff items, HS codes, and rates in the Tariff Book, to be approved by the State Council for implementation. The tariff quota rate is to be decided by Tariff Commission of the State Council
Adjustment of the MFN rates, quota tariff rates, export tariff rates within the scope promised by the Protocol on the Accession of China to the WTO, and adjustment of preferential tariff rates applicable countries/regions, goods scope, and rates, or adjustment of general tariff rates.	To be decided by the State Council, and reported to the Standing Committee of the National People's Congress for record	
The application of MFN rates under special cases	To be decided by the State Council, and reported to the Standing Committee of the National People's Congress for record	Decided by the Tariff Commission of the State Council
Conventional Tariff	To be implemented by the Tariff Commission of the State Council after the	Not specified

	approval of international treaties, agreements	
The goods scope, tariff rates and duration of interim tariff	To be decided by the Tariff Commission of the State Council	Decided by the Tariff Commission of the State Council
Technical conversion of tariff rates related to the adjustment of tariff items	To be proposed by the Tariff Commission of the State Council proposes, approved by the State Council for implementation.	
Anti-dumping duties, anti-subsidy duties, and safeguard measures tariffs	To be decided by the Tariff Commission of the State Council	
Retaliatory tariffs	To be proposed by the Tariff Commission of the State Council proposes, approved by the State Council for implementation.	

2. Clarify the tax obligations and responsibilities under new business models and trade patterns - withholding agent and penalties

Withholding Agent	Penalty
The operators of e-commerce platforms, logistics and broker service providers engaged in cross-border e-commerce retail imports, as well as the entities and individuals who are legally or administratively required to withhold and collect import duties, are the withholding agents of duties.	If the withholding agents fail to withhold or collect taxes, Customs shall impose taxes on the taxpayers and impose a fine of 50% to 3 times the amount of the unpaid taxes on the withholding agents.

3. Build a modern customs tariff administration system - providing legal basis to enforce Customs' mature experience and practices

Customs' Mature Experience and Practices	Provisions of Customs Tariff Law
Nationwide integration of Customs clearance	Taxpayers and withholding agents of imported and exported goods could choose Customs to declare and pay taxes in accordance with the regulations.
Two-step declaration	The mode of separating the release of goods from the determination of duty amount can be adopted.
Consolidated Tax Collection	Taxpayers and withholding agents of imported and exported goods shall pay taxes within 15 days from the date of declaration. Those who meet the conditions stipulated by Customs and provide guarantees could make consolidated tax payment before the end of the fifth working day of the next month.

4. Controversial issues - priority of customs tax, anti-circumvention

Controversial Issues	Provisions of Customs Tariff Law
Priority of customs tax collection	Customs taxes take priority over unsecured claims, except as otherwise provided by law. If taxpayers' tax arrears occur before the mortgage or pledge, the tax shall be enforced before the mortgage or pledge. Taxpayers who have unpaid tax and meantime are fined or confiscated by administrative authorities, and whose assets are insufficient to make payment simultaneously, shall pay the taxes first.
Reduce the dutiable amount for anti-circumvention	For behaviors that evade the provisions of Chapter 2 and Chapter 3 of the Customs Tariff Law and reduce the dutiable amount without reasonable commercial purposes, the authorities could take anti-circumvention measures such as adjusting tariffs.

5. Consistency with other tax administration regulations – tax refund/claw-back Period

Provisions of the Tax Administration and Collection Law	Provisions of the Customs Law	Provisions of the Customs Tariff Law
<p>Tax authorities shall refund the excess amount to the taxpayer upon discovering overpayment of tax amount made by a taxpayer. Taxpayers who discover an overpayment within three years from the date of tax payment can claim a refund of the excess tax amount and the bank deposit interest of the same period from the tax authorities.</p>	<p>Where the taxes are over-levied, Customs shall refund the excess amount upon discovery. The taxpayer could claim a refund of the excess tax amount from Customs within one year of the date of tax payment.</p>	<p>Where the taxes are over-levied, Customs shall notify the taxpayer to handle the refund procedures upon discovery. Taxpayers who discover overpaid taxes could claim in writing to Customs for a refund of the excess tax amount within three years of the date of tax payment.</p>
<p>In the event that the tax authorities are liable for a taxpayer or withholding agent failing to pay taxes or underpaying taxes, the tax authorities could require the taxpayer or withholding agent for claw-back within three years but could not impose any late payment charges.</p> <p>In the event that a taxpayer or withholding agent fails to pay taxes or underpay taxes due to its own errors such as a miscalculation, the tax authorities may, within three years, pursue the claw-back and late payment charges. In special cases, the retrospective period for pursuing claw-back can be extended to five years.</p> <p>In the cases of tax evasion, tax refusal or tax fraud, the tax authorities could not be restricted by the specific period set forth in the preceding article in pursuing claw-back, late payment charges or tax amount defrauded.</p>	<p>Where the Customs finds that the tariffs are short-levied or not levied on a consignment of import or export goods after the release of import and export goods/items, the Customs could pursue the claw-back from the taxpayers within one year from the date of tax payment or goods release. If the short-levied or non-levied tariffs are due to the taxpayer's violation of the customs regulations, the Customs could pursue claw-back within three years.</p>	<p>Within three years from the date of tax payment or goods release by taxpayers or withholding agents, Customs have the right to confirm the taxable amount. If the taxable amount confirmed by Customs is inconsistent with the declared tax amount by taxpayers or withholding agents, Customs shall issue a confirmation of tax amount to the taxpayer or withholding agent. The taxpayer or withholding agent shall pay claw-back or apply for tax refund within the period specified by Customs in accordance with the tax amount specified in the confirmation of tax amount.</p> <p>If tariffs on goods have been short-levied or not levied due to violations of regulations by a taxpayer or withholding agent, the Customs shall pursue claw-back within three years from the date of tax payment or goods release, and a late payment of 0.05% of the short-levied or not levied tax amount shall be imposed on a daily basis from the date of tax payment or goods release.</p> <p>In the case of smuggling, the Customs could not be restricted by the specific period set forth in the preceding article in pursuing claw-back, late payment charges, and have the right to determine the taxable amount.</p>

PwC Observations and Recommendations

The Customs Tariff Law is an important legislation in the fields of customs and global trade, which not only provides regulatory basis for customs tariff collection and management, but also maintains and supports the current tariff system and tariff burden. Meanwhile, it also legalizes the new tax collection and management model adopted by Customs, thus providing greater certainty for enterprises in duty payment. PwC's observations on the Customs Tariff Law are as follows:

1. **More neutral expression on tariff collection and payment.** Provisions of the tariff collection and payment provisions under the Customs Tariff Law put less emphasis on customs review and inspection as compared with the Customs Law and the Regulation on Import and Export Duties. This is in line with the current supervision model of "self-reporting and self-payment" for imported goods, but also puts higher requirements on the Customs declaration of taxpayers.
2. **Expectations for future reform and innovation in tax collection.** The Customs Tariff Law clarifies the legislative purposes, including "promoting foreign trade, advancing high standard openness, and driving high-quality development". The Customs

Tariff Law also includes some new models of customs tax collection and management in the provisions. Therefore, PwC believes that this legislation will encourage Customs to further reform and innovate the tax collection and management systems to adapt to more new forms and models of foreign trade.

3. **Recent regulatory revisions and updates require continuous attention.** The relevant administrative regulations of the State Council and departmental rules of the GAC are expected to be concentratedly revised and updated before the formal implementation of the Customs Tariff Law to avoid conflicts with superior laws and to formulate detailed rules for the general provisions of the Customs Tariff Law. At the same time, the approval of the Customs Tariff Law also marks the revision of the Customs Law and other related regulations, such as GAC Decree No.213 (Customs Valuation Measures), will enter into a new stage, which also require continuous attention.

The Customs Tariff Law will come into effect on December 1, 2024, importers and exporters need to confirm that their import and export businesses and tariff payments comply with the Customs Tariff Law and related laws and regulations. Therefore, we suggest:

1. **Proactively conduct internal review of the customs declaration and tax payment process and accuracy of tax-related elements.** As the Customs Tariff Law have been published, enterprises are recommended to review the current import and export declarations and tax payment processes accordingly for any potential compliance gap or optimization opportunities. Self-review and assessment are also recommended for tax-related elements such as customs classification, valuation, and origin of imported and exported goods.
2. **Manage tax risk and achieve tax certainty by voluntary disclosure and advance rulings.** Voluntary disclosure to Customs can be considered for non-compliance identified during a self-review. A voluntary disclosure can generally help to waive late payments and penalties. Customs advance rulings can provide tax certainty and reduce potential tax risks for technical issues such as customs classification, valuation, and origin. Note that enterprises making an assessment to any financial implications for non-compliance issues under an ongoing discussion with Customs needs to consider a three-year claw-back period.
3. **Pay attention to regulatory updates and strengthen communication with Customs.** It is expected that the State Council and Customs will revise and update the tariff related regulations before the implementation of the Customs Tariff Law. Therefore, it is recommended that importers and exporters keep a close eye on regulatory updates and update the internal control and compliance systems accordingly. Furthermore, it is expected that Customs may revise or clarify certain provisions on controversial issues, therefore, it is recommended that enterprises strengthen communication with Customs and provide suggestions on regulation updates and revisions.

Our Services

Regarding tariff declaration and payment, PwC can provide the following services:

1. Assist in optimization of internal control processes in relation to import and export business;
2. Assist in conducting compliance reviews and identifying potential risks, if any;
3. Assist in determination of customs classification, valuation, country of origin and other technical issues;
4. Assist in providing technical support for import tax related disputes with Customs and assist in communication with Customs;
5. Assist in applying for advanced ruling from Customs;
6. Assist in voluntary disclosure on tax related issues to Customs and provide professional technical and procedural advice;
7. Assist in communicating with Customs and proposing advice for refining and improving regulations on tax collection and payment related issues.

Let's talk

If you would like further advice in relation to the topic above or a deeper discussion of how this issue might affect your business, please contact:

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