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Llinks Corporate and M&A Bulletin
December 2018

Favorable Policies Upcoming for Cross-border E-commerce Retail Import Business——A Brief Review of the Recent New Cross-Border E-commerce Policies

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In recent years, with the launch of B2C “Haitao” (buying overseas) services such as Tmall Global, Jingdong Global Purchase, and NetEase Koala, the geographic scope of Chinese consumers’ shopping goes beyond China. At the same time, more "official" "Hai Tao" choices have enabled consumers gradually to shift from the gray area of "C2C Haitao" conducted mainly by individual sellers. With the development of cross-border E-commerce, China has also introduced a series of policies to promote and safeguard cross-border E-commerce. The forthcoming *E-commerce Law* establishes the principle that "the State promotes the development of cross-border E-commerce". In this context, on November 21, 2018, Premier Li Keqiang presided over the State Council Executive Meeting which decided to continue and refine the cross-border E-commerce retail import policy, expand the scope of application, spur consumption potential, deploy the layout of logistics hubs, and promote the quality and efficiency of the national economic activities (“*New State Council Policy*”). To implement the *New State Council Policy*, on November 28, 2018, the Ministry of

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Commerce together with other five ministries and commissions issued the *Notice on Improving the Supervision of Cross-border E-commerce Retail Import* ("*New Ministry of Commerce Policy*", and together with the *New State Council Policy*, jointly referred to as *New Cross-Border E-commerce Policies*), which has made specific provisions based on the *New State Council Policy*.

1. Evolution of Regulatory Policies for Cross-border E-commerce Retail Import

China regulates imported retail goods as personal items, on which a “postal tax” is levied. There are four categories of tax rates for different types of commodities: 10%, 20%, 30% and 50%, of which tax amount of less than RMB 50 is exempted. The full name of the postal tax is the “import tax on baggage and postal items”, which includes the value-added tax and importation consumption tax. However, the purpose of the postal tax is to levy tax on inbound commodities with non-trade characteristics, as it literally means. With the booming cross-border E-commerce, a large number of retail imports are commodities purchased by consumers, which are no longer of a non-trade nature. Unfair competition may occur if only postage tax is levied on such commodities, because the actual comprehensive tax rate for such commodities is lower than that of other similar domestically sold commodities that are imported from general trade channels.

On March 24, 2016, the Ministry of Finance, the General Administration of Customs and the State Administration of Taxation jointly issued the *Notice on Taxation Policies for Cross-Border E-commerce Retail Imports* (“*Cross-Border Tax Reform Policy*”). The *Cross-Border Tax Reform Policy* has changed the past policy of supervising imported Haitao items as “personal items”, and clearly stipulates that “import value-added tax ("VAT") and consumption tax shall be levied on the retail goods imported through cross-border E-commerce”. Besides, the *Cross-Border Tax Reform Policy* also sets a limit of RMB 2,000 per transaction and RMB 20,000 per person per year for retail goods imported through cross-border E-commerce. The tax rate for retail goods imported through cross-border E-commerce within the above limits will be set at 0% temporarily. The import VAT and consumption tax on such retail goods will no longer be exempted, and will be temporarily levied based on 70% of the statutory tax payable. Where the limit of RMB 2,000 per transaction or the limit of RMB 20,000 per person per year is exceeded, or the duty-paid price of one single inseparable item exceeds RMB 2,000, taxes will be levied based on general trade rules. Furthermore, the *Cross-Border Tax Reform Policy* also provides that it applies to the commodities on the *Cross-border E-commerce Imported Retail Goods List* published by the Ministry of Finance and other departments. On April 7, 2016, the Ministry of Finance and other departments jointly issued the *Cross-border E-commerce Imported Retail Goods List*, which excludes fresh goods, liquid milk, adult milk powder and many other commodities. Some of Haitao’s best-selling products—health products and cosmetics are also subject to strict restrictions. The *Cross-border E-commerce Imported Retail Goods List* further stipulates that when the online purchased bonded goods enter the “first line[1]” (the PRC border), the customs clearance form of such goods must be inspected. Moreover, first-time import license, registration or filing are required for cosmetics, infant formula, health food and other commodities.

The *Cross-Border Tax Reform Policy* triggered strong concerns among cross-border E-commerce businesses and consumers. For them, the most concerning issue is not the increase in the cross-border E-commerce comprehensive tax[2], nor the commodity limit of RMB 2,000 per transaction and RMB 20,000 per year, but the requirement that "import VAT and consumption tax shall be levied on the cross-border E-commerce imported retail goods E-commerce as trade goods". According to this provision, cross-border retail imports will be regulated as "trade goods", which are subject to supervision in accordance with general trade methods and the issuance of customs clearance orders when the online purchased bonded goods cross the "first line". This greatly reduces the convenience of Haitao. In particular, the *Cross-border E-commerce Imported Retail Goods List* excludes hot sellers such as fresh, liquid milk, adult milk powder and many other commodities, sets strict restrictions on health products and cosmetics, and at the same time requires first-time import license, registration or filing for cosmetics, infant formula, health food and other commodities. All these measures kept these Haitao hot sellers from import or imposed great restrictions. Accordingly, if the *Cross-Border Tax Reform Policy* was strictly implemented, it would have a significant impact on the cross-border E-commerce business.

After multi-party consultation, the State Council approved a one-year transition period for the *Cross-Border Tax Reform Policy* starting from May 11, 2016. During the transition period, cross-border E-commerce is supervised in accordance with the pilot model previously implemented. For the online purchased bonded goods crossing the "first line" in 10 pilot cities including Tianjin, Shanghai, Hangzhou, Ningbo, Zhengzhou, Guangzhou, Shenzhen, Chongqing, Fuzhou and Pingtan, the customs clearance form will not be checked and verified. In addition, first-time import license, registration or filing requirements are suspended for cosmetics, infant formula, medical equipment, special foods (including health foods, special medical formulas, etc.). For the direct purchase model of all regions, the first-time import license, registration or filing requirements for the above commodities are also suspended.

Since then, the above-mentioned transition period has been extended for several times, and the scope of application of the transitional policy has been gradually expanded. On November 15, 2016, the Ministry of Commerce announced that the transition period for the supervision of cross-border E-commerce retail imports would be extended to the end of 2017. On September 20, 2017, the State Council Executive Meeting decided to extend the above-mentioned regulatory transition period to the end of 2018. On November 22, 2017, the General Administration of Quality Supervision, Inspection and Quarantine issued the *Notice on the Registration Date of the Formulation of Imported Infant Formula Milk Powder Products* to loosen the restrictions on imported infant formula. On December 12, 2017, the Ministry of Commerce further stated that from January 1, 2018, five cities including Hefei, Chengdu, Dalian, Qingdao and Suzhou are added to the scope of the transitional policy.

2. Main Contents of the New State Council Policy

As the transition period specified in the previous regulatory policy is coming to an end at the end of 2018, the *New State Council Policy* is introduced timely, which points out the general direction for retail import administration of cross-border E-commerce after the transition period expires. It also continues the attitude of "loosening" and "deregulation" towards cross-border E-commerce since May 2016. The main contents are as follows:

1) Continuing the current regulatory policy on cross-border E-commerce retail imports from January 1, 2019 without the implementation of the first-time import licensing, registration or filing requirements for cross-border E-commerce retail imports, and treating cross-border E-commerce retail imports as personal items.

2) Expanding the application scope of the policy from 15 cities to 22 cities, including Beijing, Shenyang, Nanjing, Wuhan, Xi'an and Xiamen (supervision of direct purchase businesses in non-pilot cities can be implemented according to the relevant regulatory policies)

3) Further expanding the scope of goods enjoying preferential policies, adding 63 tax items with high consumer demand on the basis of the zero tariff within the quota and the applying a 70% statutory import VAT and consumption tax levied on the goods under *Cross-Border E-commerce Imported Retail Goods List*; increasing the upper limit of the commodities for enjoying preferential tax policies, raising the single transaction limit from RMB 2,000 to RMB 5,000, and improving the annual transaction limit from RMB 20,000 to RMB 26,000

4) Supporting cross-border E-commerce exports, studying and refining relevant export tax rebate policies in accordance with international prevailing practice.

5) Strengthening the enforcement of responsibilities of cross-border E-commerce enterprises, platforms, payment and logistics service providers, enhancing product quality and safety monitoring as well as risk prevention and control, maintaining market order for fair competition, and protecting consumers' rights.

3. Main Contents of the New Ministry of Commerce Policy

The *New Ministry of Commerce Policy* is the supplement and implementation of the *New State Council Policy*, setting out specific provisions on the regulatory policies for cross-border E-commerce retail imports after the transition period. Based on the *New State Council Policy*, the *New Ministry of Commerce Policy* has clarified the following contents.

1) Clarifying the definition of "cross-border E-commerce retail import", which refers to the consumption behavior of purchasing oversees goods by consumers in China via cross-border E-commerce third-party platform operators, and delivering to the domestic country through "online purchase bonded import" or "direct purchase import".

2) Specifying that cross-border E-commerce imported retail goods shall meet the following requirements:

a) Falling into the *Cross-Border E-commerce Imported Retail Goods List*, and limited to personal use and meeting conditions of the cross-border E-commerce retail import policy;
b) Transacted via an E-commerce transaction platform connected to the Customs' network, which enables the verification of the electronic information of transaction, payment and logistics;
c) Not transacted via an E-commerce transaction platform connected to the Customs' network, but the inbound and outbound express operators and postal enterprises are able to serve as agents of relevant E-commerce companies and payment companies, and undertake to bear corresponding legal responsibilities and transmit electronic information such as transaction and payment to the customs.

3) Making exceptions to the provision that cross-border E-commerce retail imports shall be treated as personal imports, and that the first-time import licensing, registration or filing requirements for cross-border E-commerce retail imports shall not be implemented, unless "when the relevant department explicitly suspends the import of infected goods in the endemic areas and initiates risk emergency disposal for goods with significant quality and safety risks".

4) Providing that the parties involved in cross-border E-commerce retail imports shall include: cross-border E-commerce retail import operators[3], cross-border E-commerce third-party platform operators[4], domestic service providers[5] and consumers[6], and clarifying the rights and obligations of each subject.

5) Making specific provisions on the regulatory powers and responsibilities of government regulators for cross-border E-commerce retail imports.

6) Further expanding the application scope of the regulatory policy from 22 cities in the *New State Council Policy* to 34 cities.

4. Correspondence to the E-commerce Law

China's first comprehensive law on E-commerce, the *E-commerce Law*, will take effect on January 1, 2019, and the *New Cross-Border E-commerce Policies* will be implemented simultaneously, well responding to the *E-commerce Law*.

Although the *E-commerce Law* provides that it applies to "E-commerce activities in the People's Republic of China", this does not mean that the *E-commerce Law* does not apply to cross-border E-commerce activities. E-commerce business activities in China conducted by domestic E-commerce operators (such as the sale of cross-border retail imports to domestic consumers through their domestic E-commerce platforms) can certainly be regulated by the *E-commerce Law*, which is of no difference from other E-commerce operators. As for the cross-border part of the E-commerce operator's operation process, Article 26 of the *E-commerce Law* clearly stipulates that E-commerce business operators engaging in cross-border E-commerce shall comply with laws and administrative regulations on supervision and administration of importation and exportation, and relevant provisions of the State. The aforementioned regulatory policy on cross-border E-commerce retail imports is certainly subject to the provision of Article 26.

In addition, the *E-commerce Law* also provides for the protection and promotion of cross-border E-commerce activities. Article 71 stipulates that the State promotes cross-border E-commerce development, establishes and improves administrative systems pertaining to Customs, tax, inbound and outbound inspection and quarantine, payment settlement that are commensurate with cross-border E-commerce, improves the level of facilitation of various phases in cross-border E-commerce… Article 72 of the *E-commerce Law* further provides that the importation and exportation administrative authority of the State shall promote the establishment of an integrated service and regulatory system for Customs declaration, tax payment, inspection and quarantine and other phases in cross-border E-commerce transactions, optimize regulatory process, promote and materialize information sharing, regulatory mutual recognition, law enforcement mutual assistance, and improve service and regulatory efficiency for cross-border E-commerce transactions. Cross-border E-commerce business operators may complete the relevant formalities with the importation and exportation administrative authority of the State using electronic documentation.

The *New Cross-Border E-commerce Policies* can be seen as a positive attempt by the regulatory authorities to implement the provisions of the *E-commerce Law*. The tax exemption, tax reduction, non-implementation of the first import licensing, registration or filing requirements in the pilot policies are all constructive attempts to build the "Customs, tax, inbound and outbound inspection and quarantine, payment settlement which correspond to characteristics of cross-border E-commerce " required by the *E-commerce Law*. At the same time, the provisions of the establishment of an integrated service and regulatory system for Customs declaration, tax payment, inspection and quarantine and other phases and that cross-border E-commerce business operators may complete the relevant formalities with the importation and exportation administrative authority of the State using electronic documentation will also further enhance the efficiency of cross-border E-commerce retail import activities, solve the long-lasting problems of cross-border E-commerce, promote the positive and orderly development of cross-border E-commerce, and better serve domestic consumers.

However, it is still necessary to remind cross-border E-commerce operators that although the transition period of the regulatory policy for cross-border E-commerce retail imports has been extended, the transition period is essentially temporary. Without a further extension, the policy will come to an end at the end of 2018, after which the aforementioned *New Cross-Border E-commerce Policies* will be implemented. The regulatory authorities set the transition period and extend it for several times， aiming to allow the majority of cross-border E-commerce companies some time to adapt and focus on building their corporate brands and increasing categories of goods to enhance their competitiveness, and avoiding significant impacts of the implementation of the *Cross-Border Tax Reform Polic*y. In the future, only those enterprises that are far-sighted, self-disciplined, and reconfigured in resource layout and business model can smoothly complete the transition and continue to grow and prosper.

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[1] The “first line” here refers to the border line.

[2] Depending on different types of goods, although the comprehensive tax rate of some retail imported goods will be increased after the Cross-Border Tax Reform Policy, that of some other goods will be reduced.

[3] Referring to overseas registered enterprises that sell cross-border E-commerce retail imports to from overseas to domestic consumers, which is the owner of the goods.

[4] Referring to applying for the AIC registration in China, providing services such as web space, virtual business premises, transaction rules, transaction matching, information release, etc. for both parties (consumers and cross-border e-commerce enterprises), and establishing an information network operator for the transaction parties to independently conduct trading activities.

[5] Referring to the main body that handles business registration in China, accepts the entrustment of cross-border E-commerce enterprises to provide services such as declaration, payment, logistics, warehousing and other services, has corresponding operational qualifications, directly provides relevant payment, logistics and warehousing information to customs, accepts follow-up supervision by customs, market supervision and other departments, and assumes corresponding responsibilities.

[6] Referring to domestic purchasers of cross-border E-commerce retail import.