



## New PRC Customs Valuation Rules

The General Administration of Customs ("GAC") issued a new amended and updated version of the Measures for the Review and Determination of the Customs Value of Imported and Exported Goods ("the Measures") on 28 March 2006. It just took effect on 1 May 2006. The Measures replaces its 2001 version which was issued by GAC upon China's accession to the WTO (GAC Order No.102, effective from 1 January 2002) and combines the Regulation on Valuation of Royalties relating to Imported Goods (effective from 1 July 2003).

Some of the salient points are highlighted as follows:

### More Definitions and Details

The Measures is more detailed and provides taxpayers with clear definitions of basic customs valuation concepts. At the same time, it in a few instances goes beyond what is prescribed by the WTO valuation rules, i.e. the Measures allows Customs to apply "other methods, as reviewed and approved by Customs" to conduct assessment of import values and related factors.

### Scope Creep

As was the case with the old measures, the Measures could be viewed as being out of step with WTO valuation rules, e.g. fees paid for distribution rights, sales rights and other similar rights shall be subject to duty under certain circumstances. It is interesting to note that warranty fees have been singled out as dutiable without any additional explanations. This stipulation may be used by local Customs offices to force importers and their related companies in China to pay duty/VAT on warranty fees incurred in China, as we have seen is currently being done by some port Customs officers.

### Special Rules for Special Zones

The Chapter (current Chapter III) on valuation of "special" imported goods has been expanded significantly. This Chapter deals with valuation of goods imported from bonded zones or export processing zones, leased goods, goods exported overseas for repair, etc. Of interest and possible concern is Article 30 which stipulates that when goods (except for goods produced by processing trade enterprises) are sold from bonded zones, logistics parks/zones, etc., the dutiable value for customs purposes shall be the sale price to domestic customer. Expenses incurred in the bonded zones, logistics parks, etc. shall be added to the dutiable value of the goods sold from the zones.

## **Rights and Responsibilities**

A new addition is Chapter VI, which clarifies the rights and responsibilities of taxpayers and Customs. Article 46, for example, clearly moves the burden of proof onto the taxpayer who is responsible for providing Customs with truthful information and documents regarding import values of goods. According to Article 47, Customs has the right to copy documents, to enter taxpayers' premises, to contact other people or entities for information related to valuation investigations, to check bank accounts after obtaining proper approvals, and to contact tax authorities to understand the payment situation on domestic taxes as related to imported/exported goods.

## **Response Time**

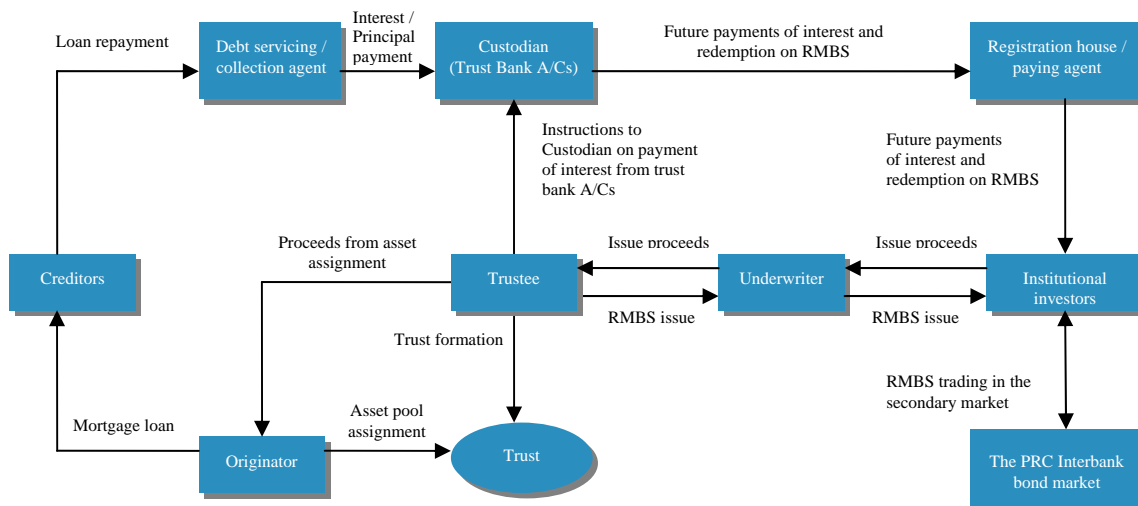
Chapter VI shortens the timeline for provision of a written response to a Customs valuation inquiry. It is now 5 working days. An extension could be applied for, which normally cannot exceed 10 working days (Article 48). This new stipulation effectively means that Customs could proceed with adjustment of an import value if the requested information and documents are not submitted to Customs within 5 working days. It also applies where Customs issues a price negotiation notice to the taxpayer. If taxpayer does not respond within the stipulated period, Customs will enforce their decision.

## **Your Right to A Written Ruling**

Article 55 stipulates that taxpayers can request in writing for an explanation from Customs (after Customs have adjusted an import value) for the basis for customs value determination. Customs is obliged to respond by completing a "Customs Valuation Notification" (a blank sample is attached to the Measures). However, there is no 5-day limitation for Customs to respond to your request – there is no timeframe given for Customs written response.

# The PRC Taxation on Asset Securitisation

To support innovation in financial service industry and to enhance asset / liability management of financial institutions in China, the State Administration of Taxation has issued a tax circular, Cai Shui [2006] No. 5, on 20 February 2006 to clarify the PRC taxation policy on credit asset securitisation arrangements. This new circular appears to deal with the tax issues involved in the first major precedent case on the residential mortgage-backed securitisation ("RMBS") scheme arranged by China Construction Bank in December 2005 (see the transaction structure as shown below).



The salient points discussed in this new PRC taxation framework for asset securitisation are set out below:

- Stamp duty exemption is offered on various documents to be effectuated in various stages of the securitisation transactions; including:
  - Agreement on assignment of credit assets from the originator to the trustee;
  - Trustee management agreement;
  - Various contracts executed by originator / trustee with the custodian, the central clearing registration house and other securitisation services providers at different stages of the securitisation process;
  - Securities sales documents executed by the trustee;
  - Investors' sales and purchase contracts of asset-backed securities; and
  - Accounting books established by the originator / trustee in bookkeeping of the securitisation transaction.
- Business tax exemption is granted to non-financial institutional investors with respect to the gain on disposal of asset-backed securities.
- Various corporate income tax rules are set to try to avoid double taxation on the income derived from different level of transactions in the securitisation program.

Although asset securitisation projects in China are currently still at their infant stage and have not been opened for foreign participation, the new circular definitely establishes an important taxation framework for future asset securitisation transactions in China.

In the context of this China Tax / Business News Flash, China refers to the People's Republic of China but excludes Hong Kong Special Administrative Region, Macao Special Administrative Region and Taiwan Region.

The information contained in this publication is for general guidance on matters of interest only and is not meant to be comprehensive. The application and impact of laws can vary widely based on the specific facts involved. Before taking any action, please ensure that you obtain advice specific to your circumstances from your usual PricewaterhouseCoopers client service team.

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