China Tax Weekly Update

ISSUE 48 | December 2016

Reference: Shui Zong Fa [2016] No.169
Issuance date: 2 December 2016
Effective date: N/A

Relevant industries: All
Relevant companies: All
Relevant taxes: All

Potential impacts on businesses:

- Risks of being challenged due to non-compliance issues increased

You may click here to access full content of the circular.

SAT pushes forward China's 13th Five Year Plan agenda for giving tax rules more rigorous basis in law

On 2 December 2016, the SAT issued Shui Zong Fa [2016] No.169, publishing their work plan for reinforcing the "rule of law" in Chinese tax administration, in the course of the 13th Five-Year-Plan period (i.e., 2016 to 2020). The work plan highlights the following tasks:

The ministries and commissions of the State Council, the People's Bank of China, the State Audit Administration as well as the other organs endowed with administrative functions directly under the State Council may, in accordance with the laws as well as the administrative regulations, decisions and orders of the State Council, formulate rules within the ambit of their authority.

- Accelerate the revision of the Tax Collection and Administration Law (generally anticipated for release in 2017), as well as tax authority preparations for its implementation.
- Put existing regulations and guidance on a statutory basis (i.e., to turn them into laws passed by National People's Congress). Combine, standardize and improve tax preferential policies.
- Push to completion the legislative basis for the new environmental protection law and the new real estate tax law.
- Further improve mechanisms for airing and collection of public input/views on new tax rules and tax regulatory documents, including consultation and feedback arrangements. Draft State Administration of Taxation (SAT) circulars shall be open for the public to express their opinion for no less than a 30 day period, with the announcement made by way of mass media, over the internet, or in newspapers, or other channels. There is an exception where rules and regulations need to be kept secret before implementation.
- Consider entrusting third parties to draw up SAT circulars.
- Review the legality of existing rules to identify cases where rules have impaired the rights of taxpayers. It is noted that, unless these actions have some basis in an existing law, or in an administrative regulation, decision, or order of the State Council, arbitrary expansion of the taxing powers of local tax authorities, or limitation of their admitted responsibilities per law, is not permissible.
- Tax regulatory documents shall be publically announced, otherwise, they cannot be used as the basis for tax endorsement cases. This is intended to prevent local tax authorities from using draft tax rules as a basis for enforcement.

- Conduct a review of the existing SAT circulars identifying those that need to be amended/annulled. Make the results of the review available to the public as directed by the State Council (i.e., publish/maintain a list of amended/abolished circulars.). Review existing rules, with amendment/abolition of redundant rules as appropriate, on a regular basis.
- Consult with experts, such as legal advisors, public lawyers, tax research institutions, etc., prior to putting new tax administration rules into effect. A database of relevant experts shall be established for consultation on major rules. Ensure that the experts are in a position to carry out this work in an independent manner. Progressively make the experts' opinions available to the public.
- Enhance further digital platforms for tax compliance. By end of 2017, it is intended that taxpayers can handle most of their tax affairs online. This is facilitated by the of roll out of the Golden III tax system, implementation of "Internet+" initiative and the establishment of e-tax bureaus. This is to be taken further by establishing an information system that can underpin the planned IIT reform (anticipated for 2017). This is to be accompanied by promotion of the newly-introduced system for managing VAT invoices, and the set up an information exchange platform to facilitate aggregation of tax information received from third-parties (i.e., domestic third parties such as Chinese banks and other government authorities).

Reference: SAT Announcement [2016] No. 78
Issuance date: 30 November 2016
Effective date: 1 January 2017

Relevant industries: All
Relevant companies: All
Relevant taxes: All

Potential impacts on businesses:
- Compliance risks due to regulatory uncertainties reduced

You may click here to access full content of the circular.

Rules for discretion for tax authorities to levy penalties

On 30 November 2016, the SAT issued Announcement [2016] No. 78 (Circular 78), setting out the discretionary powers of local tax authorities to levy penalties, which shall take effect from 1 January 2017.

This rule is developed based on certain laws and regulations including the existing Tax Collection and Administration Law and the State Council's instruction in 2012 on regulating the discretionary powers of tax authorities on levying penalties. This is also in line with the SAT work plan for reinforcing the "rule of law" in Chinese tax administration we just discussed above.

The rules mainly set out:

- The discretion of tax authorities to select the administrative sanction types, to determine how serious the punishment will be. The rules also set out the discretion of the authorities to make a decision to impose the administrative sanction, taking account of the facts, and the nature and seriousness of the consequences of the violations.
- Tax administrative sanctions include:
  - Fines;
  - Confiscation of illegal earnings and properties;
  - Suspension of export tax refund rights;
  - Other penalties.
- The rules provide that where a violation is a taxpayer's first time, where the violation is minor, where a correction is made before detection by the tax authorities, or, a correction is made within a certain time limit ordered by the tax authorities, no administrative sanctions shall be applied to the taxpayer.
- Violations not identified within 5 years will not be pursued for the administrative sanctions covered by this notice.

- Before deciding to impose a fines above certain thresholds on taxpayers, taxpayers shall be notified of their right to a hearing, to be arranged by the tax authorities.
- The local tax authorities shall initiate an internal committee review for cases that are complicated, controversial, or with a heavier penalty, considerable impact, or which may be considered for a mitigated punishment, etc.
- Tax authorities at provincial level shall actively establish a system, which uses/refers to decided enforcement cases to guide and standardize the discretion for tax authority to levy penalties.

Reference: SAT Announcement [2016] No.80
Issuance date: 9 December 2016
Effective date: N/A

Relevant industries: All
Relevant companies: All
Relevant taxes: CIT

Potential impacts on businesses:
- Compliance risks due to regulatory uncertainties reduced

You may click here to access full content of the circular.

SAT clarifies CIT treatment of asset transfers and insurance premiums

On 9 December 2016, the SAT issued Announcement [2016] No. 80 (Announcement 80). This clarifies the corporate income tax (CIT) treatment of two special situations, which shall apply to 2016 and subsequent CIT annual filings:

- Guidance is set out in relation to the gift/contribution of assets to others by an enterprise under any of the circumstances as stipulated in Article 2 of Guo Shui Han [2008] No.828 (Circular 828). It is provided that where there is a change in the ownership of the assets*, then it shall be deemed as a sale. For a deemed sale the sales revenue amount shall be determined based on the fair value of the transferred asset, unless otherwise provided.

* For reference, the circumstances stipulated in Circular 828 as change the ownership of assets include assets:

  - used for marketing or sale; [e.g. promotional sample goods]
  - used for business entertainment;
  - used for staff incentive or welfare; [e.g. free goods for staff]
  - used for dividends distribution; [e.g. shares of a subsidiary distributed to a parent company or ultimate shareholders]
  - used for external donation; [e.g. gift of goods to a charity] or
  - any other uses which change the ownership of the assets.

  Circular 828 had provided that where the gifted assets are self-made by the enterprise, revenue from sale shall be recognised according to the external sale price of the same type of assets of the enterprise during the same period. Where the gifted assets are purchased by the enterprise from external parties, Circular 828 had provided that revenue from sale shall be recognised according to the purchase price. This approach was considered deficient and Announcement 80 replaces these methods with the use of "fair value". One difference is that if the fair value of the externally purchased assets (such as real estate) has significantly risen, the deemed sales revenue based on "fair value" under Announcement 80 will be much higher than the old "purchase price" approach under Circular 828. However, from a transferee perspective, where a fair value consideration is deemed for the transferor, it remains unclear how to conduct the determination of the deemed acquisition cost, for tax depreciation and on-sale purposes.

- Personal accident insurance premiums, paid to cover employees who take public transport for business trip, can be deducted for CIT purposes.

Reference: SAT Announcement [2016] No. 81
Issuance date: 9 December 2016
Effective date: 9 December 2016

Relevant industries: Real Estate Industry
Relevant companies: Real Estate Developers
Relevant taxes: CIT

Potential impacts on businesses:

- Compliance risks due to regulatory uncertainties reduced

You may click here to access full content of the circular.

CIT refund arising from LAT settlement clarified

On 9 December 2016, the SAT issued Announcement [2016] No. 81. This clarifies issues for CIT refund arising from land appreciation tax (LAT) settlement by real estate development enterprises.

- Upon settlement of LAT by a real estate development enterprise for a development project, in the event of a loss upon CIT annual filing, where the developer has subsequent development projects after that, such loss can be carried forward to the following years and be offset against the income of the following years. (LAT payments are deductible when calculating the CIT liability.)
- Upon settlement of LAT by a real estate development enterprise for a development project, in the event of a loss upon CIT annual filing, and where the developer does not pursue further development projects after that, the enterprise shall, based on the method stipulated in the Announcement, calculate the CIT overpaid because of LAT in project development years and apply for tax refund.

Reference: SAT Announcement [2016] No. 79
Issuance date: 11 December 2016
Effective date: 8 August 2016

Relevant industries: All
Relevant companies: Multinational enterprises
Relevant taxes: CIT / IIT

Potential impacts on businesses:
- Effective tax burden reduced

You may click here to access full content of the circular.

New China-Chile DTA takes effect

On 11 December 2016, the State Administration of Taxation (SAT) issued SAT Announcement [2016] No. 79 ("Announcement 79") to clarify the *Agreement Between the government of the People's Republic of China and the government of the republic of Chile for the Elimination of Double Taxation and the Prevention of Tax Evasion and Avoidance with respect to Taxes on Income ("China-Chile DTA")* and its *Protocol*. The China-Chile DTA and its Protocol were signed on 25 May 2015 in Santiago and formally entered into force on 8 August 2016. Announcement 79 mentions that all required approval procedures from the China and Chile sides have been fulfilled. The China-Chile DTA shall enter into effect and apply to income derived after 1 January 2017.

Amongst the DTAs that China has entered into with other countries, China-Chile DTA is the one which absorbs most of BEPS deliverables initiated by G20/OECD. It is noted that:

Article 5 ***Permanent Establishment ("PE")***	• China-Chile DTA provides that, where an enterprise of a Contracting State operates a building site, a construction, assembly or installation project in the other Contracting State, or conducts supervisory activities in connection therewith, or carries on natural resource exploration activities, then this may give rise to a PE for the enterprise, but only if such site, project or activities in the other Contracting State last more than six months. (This construction PE rule is standard to the OECD/UN Model Tax Conventions (MTC) and to China's DTAs. However, the additional anti-contract splitting provision, taken from the BEPS work and set out below, is completely novel in a China tax treaty.) • To determine whether the six-month period referred in the above paragraph has been exceeded, the Protocol further provides that, where connected activities (including supervisory and exploration activities) are carried on at the same building site, construction, assembly or installation project during different periods of time, by one or more enterprises connected with the above-mentioned enterprise, these different periods of time shall be added to the period of time during which the above-mentioned enterprise has carried on activities at that building site, construction, assembly or installation project. (This takes the anti-contract splitting rule from the BEPS Action 7 "Preventing the Artificial Avoidance of Permanent Establishment Status" report on board)
	• China-Chile DTA provides that, where an enterprise that performs services in the other Contracting State, for a period or periods exceeding in the aggregate 183 days in any twelve-month period, and these services are performed through one or more individuals who are present and performing such services in that other State, then this would give rise to a PE for the enterprise. To determine whether the 183 days period has been exceeded, the time spent on separate but connected projects carried on by the enterprise in the other Contracting State shall be aggregated.

Article 5 ***Permanent Establishment ("PE") (cont'd)***	(This service PE rule is standard to the UN MTC and to China's DTAs. However, the additional anti-contract splitting provision, inspired by but different from the BEPS work and set out below, is completely novel in a China tax treaty.) • To determine whether the 183 days period has been exceeded, the Protocol further provides that, the duration of the above-mentioned activities shall be determined by aggregating the periods during which activities are carried on in a Contracting State by connected enterprises, provided that the activities of the enterprise in that State are substantially the same as the activities carried on in that State by its connected enterprises. • China-Chile DTA provided that the use of facilities, maintenance of a stock of goods or merchandise and a fixed place of business for certain specific purposes, would not be deemed as PE, provided that activity is of a preparatory or auxiliary (P&A) character. (Normally the OECD/UN MTCs and China's DTAs provide for specific exclusions for certain activities (e.g. warehousing goods for delivery). The new changes subject these activities to an individual P&A evaluation.) (This takes the P&A proposal from the BEPS Action 7 "Preventing the Artificial Avoidance of Permanent Establishment Status" report on board.)
	• China-Chile DTA defines agency PE in the following manner - where a person is acting in a Contracting State on behalf of an enterprise and, in doing so, habitually concludes contracts, or negotiates the material elements of contracts , that are in the name of the enterprise, or for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or for the provision of services by that enterprise. • Where the person acting in a Contracting State on behalf of an enterprise of the other Contracting State carries on business in the above-mentioned State as an independent agent and acts for the enterprise in the ordinary course of that business, the person shall not be deemed as agency PE. However, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is connected, that person shall not be considered to be an independent agent。 (This takes on board the Agency PE developed by the OECD in preparatory work on PE; the rule differs from the final Agency PE rule set out in the BEPS Action 7 - "Preventing the Artificial Avoidance of Permanent Establishment Status" report.)
Article 7 ***Business Profits***	• In regard of profit attribution to PE, the Protocol further provides that only so much of the profits shall be attributable to a PE as a result of the functions performed, the assets used and the risks assumed by the permanent establishment, rather than attributing the total profits arising from the project, the activities or the services.

Article 7 ***Business Profits (cont'd)***	(This differs from standard practice in Chinese DTAs which typically include, in the business profits articles, wording facilitating the use of deemed profits attribution approaches for PE.)
Article 26 ***Entitlement to benefits***	• The Limitation-on-benefits (LOB rule). According to the Protocol, where a non-resident taxpayer apply for treaty relief, through a complex series tests, judge whether the non-resident is a "qualified person", to avoid that the non-resident makes use of conduit company that is no sufficient link with its resident country for treaty benefits purposes. (This takes on board the LOB rule that originated from BEPS Action 6 "Preventing the Granting of Treaty Benefits in Inappropriate Circumstances" report.) • Principle purpose test (PPT rule). The protocol provides that if principal purposes of an arrangement or transaction is to obtain benefit under the treaty, the treaty benefit shall not be available. (This takes the PPT rule that originated from BEPS Action 6 "Preventing the Granting of Treaty Benefits in Inappropriate Circumstances" report on board.) • If Chinese tax authority denies to grant the treaty benefits to taxpayers, the procedure shall follow the provisions of general anti-tax avoidance (Administrative Measures on General Anti-Tax Avoidance (Trial Implementation) (SAT Order [2014] No. 32))
	• Anti-abuse measures for a PE established in the third jurisdiction. Where an enterprise of a Contracting State derives income from the other Contracting State, and that income is attributable to a PE which that enterprise has in a third jurisdiction, if the combined tax that is actually paid with respect to income in the resident country and in the third jurisdiction is less than 60 per cent of the tax that would be imposed in the resident country if the income were earned or received in that country by the enterprise, the tax benefits that are agreed in the DTA entered into between income sourced country and resident country will not apply to that income. But, for interest or royalties, shall remain taxable in the sourced country to a tax that shall not exceed 15% of the gross amount; any other income shall be subject to tax under the provisions of the domestic law of the sourced country. • This can put an end to enterprise to avoid taxes by setting up a PE in the third jurisdiction with lower tax rate, while its resident country give exemption or levy less tax on profit derived from overseas PE. (This takes anti-abuse measure for a PE established in the third jurisdiction that originated from BEPS Action 6 "Preventing the Granting of Treaty Benefits in Inappropriate Circumstances" on board.)

You may click here to access full content of the China-Chile DTA and its Protocol. For an interpretation on Announcement 79 and an instruction on Chilean tax system released by the SAT, you may click here to access.

The May 2015-signed China-Chile DTA was one of the earliest treaties in the world to adopt the BEPS treaty update proposals, even before the OECD finalized these proposals in October 2015. As noted above, this adopted the full suite of BEPS PE changes, and treaty anti-abuse rules. Subsequent new/updated China DTAs and protocols have only adopted minor elements of the BEPS changes – it has been assumed that the SAT was leaving further BEPS DTA updates to the implementation of the BEPS Action 15 Multilateral Instrument (MLI) which was concluded by 100+ countries in November 2016 and will be signed by countries, likely to include China, in 2017. Most of the BEPS DTA changes for PE and treaty abuse have been made voluntary for adoption, and the DTA updates chosen by DTA counterparty countries through the MLI impact, through a special matching mechanism, on the changes that would be made to China's DTAs. China has yet to set out its MLI preferences and news on this is expected in the first half of 2017. We will provide further updates as news emerges. Our update on the MLI can be accessed below:

- *China Tax Weekly Update (Issue 45, December 2016)*

* With regard to BEPS final report and China's response as well as impacts to China tax planning by BEPS Action 7 PE proposals, you may click the following links to access the relevant analysis by KPMG:

- *China Tax Alert: OECD 2015 BEPS Deliverables issued and China's response (Issue 28, October 2015)*
- *China Tax Alert: China tax planning to be impacted by BEPS Action 7 permanent establishment proposals (Issue 12, June 2015)*

Reference: N/A
Issuance date: N/A
Effective date: N/A

Relevant industries: All
Relevant companies: All
Relevant taxes: CIT

Potential impacts on businesses:
- Actual tax burden reduced

You may click here to access full content of the circular.

Protocol to China-Pakistan DTA signed

On 8 December 2016, China and Pakistan signed an amending protocol to the *Agreement between the Government of the People's Republic of China and the Government of the Islamic Republic of Pakistan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income.*

According to the amending protocol, interest, arising from loans provided by relevant Chinese banks and by the Silk Road Fund, to projects which are set out in the China-Pakistan Economic Corridor (CPEC) Energy Cooperation Agreement, shall be exempted from income tax in Pakistan. Signing of the protocol will effectively reduce tax burden for Chinese financial institutions on their interest derived from loans offered to CPEC energy projects, as well as reducing financing costs for Chinese-funded enterprises who participate in project construction. This will provide great support to bilateral investment and economic & trade development.

* The full text of the protocol have yet been released by authority. We will monitor the development of this matter.

Reference: N/A
Issuance date: N/A
Effective date: N/A

Relevant industries: All
Relevant companies: Multinational enterprises
Relevant taxes: N/A

Potential impacts on businesses:

- Risks of being challenged due to cross-border tax anti-avoidance arrangements increased

You may click the circular titles to access full content of the circulars.

OECD advances BEPS continuity work

As mentioned in KPMG *China Tax Weekly Update* *(Issue 25, July 2016)*, *(Issue 26, July 2016)*, *(Issue 33, August 2016)* and *(Issue 37, September 2016)* , *(Issue 41, November 2016)*, the Organisation for Economic Cooperation and Development (OECD) has continued to release new policy documents for continuity BEPS work subsequent to the issuance of the October 2015 BEPS Deliverables. Recently, the OECD have further released several documents in relation to BEPS work on their official website. These releases fall within the Country-by-Country (CbC) Reporting and Mutual Agreement Procedure (MAP) areas.

- OECD releases further BEPS guidance on CbC reporting and country-specific information on implementation

  The Inclusive Framework on BEPS has released two new documents to support the global implementation of CbC reporting (BEPS Action 13):

  - Key details of jurisdictions' domestic legal frameworks for CbC reporting; and
  - Additional interpretive guidance on the CbC reporting standard.

  These documents provide essential information that will give certainty to tax administrations and Multinational Enterprise (MNE) Groups alike on implementation of CbC reporting.

  The details jurisdictions' legal frameworks for CbC reporting include the status of the legislation, first reporting periods, availability of surrogate filing and voluntary filing, and whether local filing can be required. This will be updated as Inclusive Framework members continue to finalise their legal frameworks. Information will also be published in the coming months as to the Qualifying Competent Authority Agreements (QCAA) being put in place to facilitate the international exchange of CbC reports between tax administrations.

  China's information has been included which is in line with the State Administration of Taxation (SAT) Announcement [2016] No. 42 on China's own CbC administrative guidance. You may refer to below our KPMG publications for more details:

  - *China Tax Weekly Update (Issue 27, July 2016)*
  - *China Tax Alert: State Administration of Taxation (SAT) Issued Announcement on the Enhancement of the Reporting of Related Party Transactions and Administration of Contemporaneous Documentation (Issue 23, July 2016)*

  The additional guidance relates to the case where a notification to the tax administration may be required to identify the reporting entity within a MNE Group (as provided in Article 3 of the Model Legislation in the Action 13 Report). The guidance confirms that if such notifications are required, jurisdictions have flexibility as to the due date for such notifications. This may be particularly relevant during the transition period where jurisdictions are still completing their implementation of CbC reporting, as MNE Groups may not yet have the necessary information to submit their notifications. The guidance also confirms that jurisdictions may wish to consider other transitional relief for MNE Groups with respect to these notifications, which would also be consistent with the minimum standard.

- OECD releases MAP statistics for 2015

The OECD's work to advance tax certainty specifically includes work to improve the timeliness of processing and completing mutual agreement procedure (MAP) cases under tax treaties and to enhance the transparency of the MAP process. As part of this work, the OECD makes available to the public, via its website, annual statistics on the MAP caseloads of all its member countries and of non-OECD economies that agree to provide such statistics. MAP statistics are now available for the 2015 reporting period.

Improving the effectiveness of dispute resolution mechanisms is an integral component of the work on BEPS and is the aim of Action 14 of the BEPS Action Plan (read the Final 2015 Report on Action 14 of the BEPS Action Plan). One of the principal outcomes of the work on Action 14 is the commitment by OECD and G20 countries to a minimum standard with respect to the resolution of treaty-related disputes. As part of the Action 14 minimum standard, members of the Inclusive Framework on BEPS will report MAP statistics pursuant to an agreed reporting framework ; such reporting will provide a tangible measure of the effects of the implementation of part of the minimum standard. The MAP statistics made available for 2016 and following years will accordingly contain additional information and will include reports from a significant group of non-OECD economies, most of which do not currently report MAP statistics to the OECD.

The SAT is now radically increasing the resources being committed to MAP resolution capacity. It is also increasing the resources being committed to the Advance Pricing Agreement (APA) program, which the BEPS Action 14 report describes as a key element in preventing tax disputes in the first instance. The October-2016 issued SAT Announcement 64 explicitly provides for spontaneous exchange of APAs between the Chinese tax authorities and overseas tax authorities. You may refer to below our KPMG publications for more details:

- *China Tax Weekly Update (Issue 40, October 2016)*
- *China Tax Alert: State Administration of Taxation Issued Announcement on the Enhancement of Administration of APA (Issue 28, October 2016)*

Reference: Decree of the State Council No.673
Issuance date: 14 December 2016
Effective date: 1 February 2017

Relevant industries: All
Relevant companies: All
Relevant taxes: N/A

Potential impacts on businesses:
- Compliance risks due to regulatory uncertainties reduced

You may click here to access full content of the circular.

China to further regulate investment projects

On 14 December 2016, the State Council issued regulations on approving and record filing in relation physical asset investment projects in China, which will be implemented starting on 1 February 2017.

The move is aimed at better regulating China physical asset investment projects and ensuring enterprises' autonomy in making investments. The investment projects affected by the new regulations are those in fixed assets made by enterprises in China. The new regulation highlights the following:

- The pre-approval process is targeted at investment projects involving national security issues, major productive force layout plans or strategic resources exploitation, and projects of significant public interest. All other projects are subject to the recordal filing procedure. The scope of projects requiring conferral with the approval authorities shall be set out in the Catalogue of Investment Projects Subject to Governmental Approval. (Catalogue of Investment Projects Subject to Governmental Approval (2016 version) has just been released.)

- Enterprises that cannot start approved construction projects within two years of original approval will need to apply for an extension. The enterprise shall, 30 working days before the expiry of the two years, apply for the extension. The maximum extension period is one year.
- Where the filing authority detects any filed projects that fall within a prohibited investment/construction category, or that are subject to a governmental approval process but approval has not been sought/obtained, they shall request the enterprises to redress the misconduct or to go through the approval process, while notifying other relevant authorities.
- Violations, arising from project approval, record filing and implementation processes, along with the actions taken, shall be made public through a national online supervision platform.

In addition to the above, the new regulation also standardizes procedures for approving and record filing of enterprises' investment projects in relation to: (i). Strengthening in-process and follow-up supervision; (ii). Improving services; and (iii). Penalties.

Reference: N/A
Issuance date: N/A
Effective date: N/A

Relevant industries: All
Relevant companies: All
Relevant taxes: N/A

Potential impacts on businesses:
- Forex compliance risks due to regulatory uncertainties reduced

You may click here to access full content of the circular.

SAFE clarifies forex policy on profit repatriations by FIEs

As mentioned in KPMG China Tax Weekly Update (Issue 47, December 2016), there have been increasing numbers of international media reports that the Chinese government is seeking to tighten limitation on outbound investment from China. In response, on 6 December 2016, the State Administration of Foreign Exchange (SAFE) along with three other Chinese government authorities, including the National Development and Reform Commission (NDRC), the Ministry of Commerce (MOFCOM), and the People's Bank of China (PBO) clarified supervision arrangements for China's outbound investment. Responding to questions from reporters the relevant officials said:

- The regulators are paying close attention to "irrational" outbound investment in certain industries such as real estate, hotel, cinema, entertainment, sports clubs, etc..
- Chinese outbound investing enterprises are being advised to "make decisions prudently" regarding investments in the following four categories that will now face particular regulatory attention:

  (i). Large investments unrelated to a company's core business;

  (ii). Outbound investments made by China-registered limited partnerships;

  (iii). Investments initiated and executed in a very short timeframe (i.e. presumed to be speculative); and

  (iv). Financing/capitalization of large subsidiaries controlled by much-thinner-capitalized parent companies.

On 9 December 2016, SAFE supplemented this with a statement that there has been no new restriction imposed on profit remittances out of China by foreign-invested enterprises (FIEs). This is a response to rising concerns that profit remittance by FIEs would be affected by the tightened supervision on cross-border capital flows from China.

SAFE asserted that current account convertibility is being maintained and that no restriction will be imposed on regular current account international payments and transfers where these are genuine and conducted in compliance with the relevant provisions. Remittance procedures for outbound payments related to goods and services businesses, as well as to dividends, may be handled directly with commercial banks using valid transaction documents.

Reference: Cai Kuai [2016] No. 22
Issuance date: 3 December 2016
Effective date: 3 December 2016

Relevant industries: All
Relevant companies: All
Relevant taxes: VAT

Potential impacts on businesses:

- Compliance costs reduced

You may click here to access full content of the circular.

Revised accounting rules on VAT released

As mentioned in KPMG *China Tax Weekly Update (Issue 28, July 2016)*, on 4 July 2016, the Ministry of Finance (MOF) issued Cai Ban Kuai [2016] No. 27, inviting interested parties to provide comments to the *Draft Provisions on Accounting Treatment of VAT* ("the Draft"). On 3 December 2016, the MOF issued Cai Kuai [2016] No. 22 ("Circular 22") and published the revised accounting rules related to VAT.

This will lead to changes on the presentation of financial statements, i.e., VAT related sub-accounts under the "taxes payable" account in the balance sheet; "Business taxes and surcharge" item changed to "Taxes and surcharge" in the profit statement.

In addition to the newly added accounts, such as "prepaid VAT", "input VAT pending for claimed", that have been taken onboard in the Draft, Circular 22 further adds and adjusts certain accounts as well as clarifies certain accounting treatments, see details below:

- Add/adjust accounts:
  - ❖ Insert sub-items under the item "taxes payable", including "VAT payable on transfer of financial products" and "withholding VAT" etc.
  - ❖ In the Draft, a special column of "simplified levy" was inserted under the sub-item "VAT payable". Now, this special column has been changed to under "Taxes payable" as sub-item.
- Clarify the accounting treatment: (i). Transfer of financial products; (ii). Small enterprises with low profits for their VAT exemption.
- Change the item "Business taxes and surcharges" to "Taxes and surcharges", taking account of the VAT has in place of business tax since May 2016. Real estate tax, vehicle and vessel tax, urban and township land use tax and stamp duty, which were previously recorded under item "Overhead expenses", now will be transferred to "Taxes and surcharges" item for accounting purposes.

SAT simplifies online application for VAT invoices for taxpayers with a good tax risk rating

On 30 November 2016, the SAT issued Circular (Shui Zong Han [2016] No. 638) to promote the usage of online VAT invoice applications. According to the Circular, taxpayers with class A (and B) tax credit ratings may place an order for paper VAT invoices online. This is a incentive for class A (and B) rated taxpayers and can be carried out on a voluntarily basis.

This policy also applies to unrated taxpayers (i.e. with no tax credit rating) with low tax risks, as determined by the state tax bureaus at prefecture-level, excluding newly established small-scale commercial and trade enterprises.

You may click here to access the full content of the circular.

* Taxpayers in China, registered as general VAT payers, which are not in a position to print VAT invoices (i.e. they have not installed special tax authority invoice printing machines) must obtain VAT invoices from the tax authorities in blocks.

** In the summer of 2016, 29 Chinese regulatory authorities jointly signed a cooperation memorandum under which they committed to grant more incentives to taxpayers with class-A tax credit rating. Many such incentives have been set out in the meantime. Announcement 71 is the latest of these incentives. You may access KPMG *China Tax Weekly Update (Issue 27, July 2016)* for details.

*** Chinese tax authority has also cancel the VAT invoice authentication process for taxpayers whose tax credit ratings are class-A/B/C, you may access KPMG *China Tax Weekly Update (Issue 6, February 2016), (Issue 15, April 2016) and (Issue 45, December 2016)* for more.

Pilot reform of water resources tax in Hebei

As mentioned in KPMG *China Tax Weekly Update (Issue 18, May 2016)*, the pilot program of water resource tax reform was initiated in Hebei on 1 July 2016. The MOF, the SAT and the Ministry of Water Resources, on 1 December 2016, jointly issued Cai Shui [2016] No. 130 to clarify the relevant fiscal and tax policies applied in the pilot area.

You may click here to access the full content of the circular.

Contact Us

For any enquiries, please send to our public mailbox: taxenquiry@kpmg.com or contact our partners/directors in each China/HK offices.

Khoonming Ho
Head of Tax,
KPMG China
Tel. +86 (10) 8508 7082
khoonming.ho@kpmg.com

Beijing/Shenyang
David Ling
Tel. +86 (10) 8508 7083
david.ling@kpmg.com

Tianjin
Eric Zhou
Tel. +86 (10) 8508 7610
ec.zhou@kpmg.com

Qingdao
Vincent Pang
Tel. +86 (532) 8907 1728
vincent.pang@kpmg.com

Shanghai/Nanjing
Lewis Lu
Tel. +86 (21) 2212 3421
lewis.lu@kpmg.com

Chengdu
Anthony Chau
Tel. +86 (28) 8673 3916
anthony.chau@kpmg.com

Hangzhou
John Wang
Tel. +86 (571) 2803 8088
john.wang@kpmg.com

Guangzhou
Lilly Li
Tel. +86 (20) 3813 8999
lilly.li@kpmg.com

Fuzhou/Xiamen
Maria Mei
Tel. +86 (592) 2150 807
maria.mei@kpmg.com

Shenzhen
Eileen Sun
Tel. +86 (755) 2547 1188
eileen.gh.sun@kpmg.com

Hong Kong
Karmen Yeung
Tel. +852 2143 8753
karmen.yeung@kpmg.com

Northern China

David Ling
Head of Tax,
Northern Region
Tel. +86 (10) 8508 7083
david.ling@kpmg.com

Andy Chen
Tel. +86 (10) 8508 7025
andy.m.chen@kpmg.com

Yali Chen
Tel. +86 (10) 8508 7571
yali.chen@kpmg.com

Conrad TURLEY
Tel. +86 (10) 8508 7513
conrad.turley@kpmg.com

Milano Fang
Tel. +86 (532) 8907 1724
milano.fang@kpmg.com

Tony Feng
Tel. +86 (10) 8508 7531
tony.feng@kpmg.com

John Gu
Tel. +86 (10) 8508 7095
john.gu@kpmg.com

Rachel Guan
Tel. +86 (10) 8508 7613
rachel.guan@kpmg.com

Helen Han
Tel. +86 (10) 8508 7627
h.han@kpmg.com

Michael Wong
Tel. +86 (10) 8508 7085
michael.wong@kpmg.com

Josephine Jiang
Tel. +86 (10) 8508 7511
josephine.jiang@kpmg.com

Henry Kim
Tel. +86 (10) 8508 5000
henry.kim@kpmg.com

Li Li
Tel. +86 (10) 8508 7537
li.li@kpmg.com

Lisa Li
Tel. +86 (10) 8508 7638
lisa.h.li@kpmg.com

Thomas Li
Tel. +86 (10) 8508 7574
thomas.li@kpmg.com

Simon Liu
Tel. +86 (10) 8508 7565
simon.liu@kpmg.com

Alan O'Connor
Tel. +86 (10) 8508 7521
alan.oconnor@kpmg.com

Vincent Pang
Tel. +86 (10) 8508 7516
+86 (532) 8907 1728
vincent.pang@kpmg.com

Naoko Hirasawa
Tel. +86 (10) 8508 7054
naoko.hirasawa@kpmg.com

Shirley Shen
Tel. +86 (10) 8508 7586
yinghua.shen@kpmg.com

Joseph Tam
Tel. +86 (10) 8508 7605
laiyiu.tam@kpmg.com

Joyce Tan
Tel. +86 (10) 8508 7666
joyce.tan@kpmg.com

Jessica Xie
Tel. +86 (10) 8508 7540
jessica.xie@kpmg.com

Christopher Xing
Tel. +86 (10) 8508 7072
christopher.xing@kpmg.com

Irene Yan
Tel. +86 (10) 8508 7508
irene.yan@kpmg.com

Jessie Zhang
Tel. +86 (10) 8508 7625
jessie.j.zhang@kpmg.com

Sheila Zhang
Tel: +86 (10) 8508 7507
sheila.zhang@kpmg.com

Tiansheng Zhang
Tel. +86 (10) 8508 7526
tiansheng.zhang@kpmg.com

Tracy Zhang
Tel. +86 (10) 8508 7509
tracy.h.zhang@kpmg.com

Eric Zhou
Tel. +86 (10) 8508 7610
ec.zhou@kpmg.com

Central China

Lewis Lu
Head of Tax,
Eastern & Western Region
Tel. +86 (21) 2212 3421
lewis.lu@kpmg.com

Alan Garcia
Tel. +86 (21) 2212 3509
alan.garcia@kpmg.com

Cheng Chi
Tel. +86 (21) 2212 3433
cheng.chi@kpmg.com

Yasuhiko Otani
Tel. +86 (21) 2212 3360
yasuhiko.otani@kpmg.com

Johnny Deng
Tel. +86 (21) 2212 3457
johnny.deng@kpmg.com

Cheng Dong
Tel. +86 (21) 2212 3410
cheng.dong@kpmg.com

Marianne Dong
Tel. +86 (21) 2212 3436
marianne.dong@kpmg.com

Chris Ge
Tel. +86 (21) 2212 3083
chris.ge@kpmg.com

Chris Ho
Tel. +86 (21) 2212 3406
chris.ho@kpmg.com

Henry Wong
Tel. +86 (21) 2212 3380
henry.wong@kpmg.com

Jason Jiang
Tel. +86 (21) 2212 3527
jason.jt.jiang@kpmg.com

Flame Jin
Tel. +86 (21) 2212 3420
flame.jin@kpmg.com

Sunny Leung
Tel. +86 (21) 2212 3488
sunny.leung@kpmg.com

Michael Li
Tel. +86 (21) 2212 3463
michael.y.li@kpmg.com

Karen Lin
Tel. +86 (21) 2212 4169
karen.w.lin@kpmg.com

Christopher Mak
Tel. +86 (21) 2212 3409
christopher.mak@kpmg.com

Henry Ngai
Tel. +86 (21) 2212 3411
henry.ngai@kpmg.com

Ruqiang Pan
Tel. +86 (21) 2212 3118
ruqiang.pan@kpmg.com

Amy Rao
Tel. +86 (21) 2212 3208
amy.rao@kpmg.com

Wayne Tan
Tel. +86 (28) 8673 3915
wayne.tan@kpmg.com

Tanya Tang
Tel. +86 (25) 8691 2850
tanya.tang@kpmg.com

Rachel Tao
Tel. +86 (21) 2212 3473
rachel.tao@kpmg.com

Janet Wang
Tel. +86 (21) 2212 3302
janet.z.wang@kpmg.com

John Wang
Tel. +86 (21) 2212 3438
john.wang@kpmg.com

Mimi Wang
Tel. +86 (21) 2212 3250
mimi.wang@kpmg.com

Jennifer Weng
Tel. +86 (21) 2212 3431
jennifer.weng@kpmg.com

Grace Xie
Tel. +86 (21) 2212 3422
grace.xie@kpmg.com

Bruce Xu
Tel. +86 (21) 2212 3396
bruce.xu@kpmg.com

Jie Xu
Tel. +86 (21) 2212 3678
jie.xu@kpmg.com

Robert Xu
Tel. +86 (21) 2212 3124
robert.xu@kpmg.com

Yang Yang
Tel. +86 (21) 2212 3372
yang.yang@kpmg.com

William Zhang
Tel. +86 (21) 2212 3415
william.zhang@kpmg.com

Dylan Jeng
Tel. +86 (21) 2212 3080
dylan.jeng@kpmg.com

Hanson Zhou
Tel. +86 (21) 2212 3318
hanson.zhou@kpmg.com

Anthony Chau
Tel. +86 (21) 2212 3206
anthony.chau@kpmg.com

Michelle Zhou
Tel. +86 (21) 2212 3458
michelle.b.zhou@kpmg.com

Southern China

Lilly Li
Head of Tax,
Southern Region
Tel. +86 (20) 3813 8999
lilly.li@kpmg.com

Penny Chen
Tel. +1 (408) 367 6086
penny.chen@kpmg.com

Vivian Chen
Tel. +86 (755) 2547 1198
vivian.w.chen@kpmg.com

Sam Fan
Tel. +86 (755) 2547 1071
sam.kh.fan@kpmg.com

Joe Fu
Tel. +86 (755) 2547 1138
joe.fu@kpmg.com

Ricky Gu
Tel. +86 (20) 3813 8620
ricky.gu@kpmg.com

Fiona He
Tel. +86 (20) 3813 8623
fiona.he@kpmg.com

Angie Ho
Tel. +86 (755) 2547 1276
angie.ho@kpmg.com

Aileen Jiang
Tel. +86 (755) 2547 1163
aileen.jiang@kpmg.com

Cloris Li
Tel. +86 (20) 3813 8829
cloris.li@kpmg.com

Jean Li
Tel. +86 (755) 2547 1128
jean.j.li@kpmg.com

Sisi Li
Tel. +86 (20) 3813 8887
sisi.li@kpmg.com

Mabel Li
Tel. +86 (755) 2547 1164
mabel.li@kpmg.com

Kelly Liao
Tel. +86 (20) 3813 8668
kelly.liao@kpmg.com

Patrick Lu
Tel. +86 (755) 2547 1187
patrick.c.lu@kpmg.com

Grace Luo
Tel. +86 (20) 3813 8609
grace.luo@kpmg.com

Maria Mei
Tel. +86 (592) 2150 807
maria.mei@kpmg.com

Eileen Sun
Tel. +86 (755) 2547 1188
eileen.gh.sun@kpmg.com

Michelle Sun
Tel. +86 (20) 3813 8615
michelle.sun@kpmg.com

Bin Yang
Tel. +86 (20) 3813 8605
bin.yang@kpmg.com

Lixin Zeng
Tel. +86 (20) 3813 8812
lixin.zeng@kpmg.com

Hong Kong

Ayesha M. Lau
Head of Tax, Hong Kong
Tel. +852 2826 7165
ayesha.lau@kpmg.com

Chris Abbiss
Tel. +852 2826 7226
chris.abbiss@kpmg.com

Darren Bowdern
Tel. +852 2826 7166
darren.bowdern@kpmg.com

Yvette Chan
Tel. +852 2847 5108
yvette.chan@kpmg.com

Lu Chen
Tel. +852 2143 8777
lu.l.chen@kpmg.com

Rebecca Chin
Tel. +852 2978 8987
rebecca.chin@kpmg.com

Wade Wagatsuma
Tel. +852 2685 7806
wade.wagatsuma@kpmg.com

Natalie To
Tel. +852 2143 8509
natalie.to@kpmg.com

Matthew Fenwick
Tel. +852 2143 8761
matthew.fenwick@kpmg.com

Sandy Fung
Tel. +852 2143 8821
sandy.fung@kpmg.com

Charles Kinsley
Tel. +852 2826 8070
charles.kinsley@kpmg.com

Stanley Ho
Tel. +852 2826 7296
stanley.ho@kpmg.com

Becky Wong
Tel. +852 2978 8271
becky.wong@kpmg.com

Barbara Forrest
Tel. +852 2978 8941
barbara.forrest@kpmg.com

John Kondos
Tel. +852 2685 7457
john.kondos@kpmg.com

Kate Lai
Tel. +852 2978 8942
kate.lai@kpmg.com

Travis Lee
Tel. +852 2143 8524
travis.lee@kpmg.com

Irene Lee
Tel. +852 2685 7372
irene.lee@kpmg.com

Alice Leung
Tel. +852 2143 8711
alice.leung@kpmg.com

Jocelyn Lam
Tel. +852 2685 7605
jocelyn.lam@kpmg.com

Ivor Morris
Tel. +852 2847 5092
ivor.morris@kpmg.com

Benjamin Pong
Tel. +852 2143 8525
benjamin.pong@kpmg.com

Malcolm Prebble
Tel. +852 2684 7472
malcolm.j.prebble@kpmg.com

David Siew
Tel. +852 2143 8785
david.siew@kpmg.com

Murray Sarelius
Tel. +852 3927 5671
murray.sarelius@kpmg.com

John Timpany
Tel. +852 2143 8790
john.timpany@kpmg.com

Lachlan Wolfers
Tel. +852 2685 7791
lachlan.wolfers@kpmg.com

Steve Man
Tel. +852 2978 8976
steve.man@kpmg.com

Curtis Ng
Tel. +852 2143 8709
curtis.ng@kpmg.com

Daniel Hui
Tel. +852 2685 7815
daniel.hui@kpmg.com

Karmen Yeung
Tel. +852 2143 8753
karmen.yeung@kpmg.com

Erica Chan
Tel. +852 3927 5572
erica.chan@kpmg.com

Adam Zhong
Tel. +852 2685 7559
adam.zhong@kpmg.com

kpmg.com/cn