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NEWSLETTER

LATEST NEWS FROM CHINA



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Latest news from China
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1. PBOC New Revisions on the Registration of Pledge of Accounts Receivable

News Category: Finance and Accounting
Order of the People's Bank of China No.3 [2017]
Title: *Measures for the Registration of Pledge of Accounts Receivables (Revised in 2017)*
Promulgator: PBOC
Promulgation Date: October 25th, 2017
Effective Date: December 1st, 2017

The revised measures have broadened the definition of **'accounts receivable'** by adding that it includes now "other rights entitled by the right holder under the law to claim payments", hence it covers now payment rights derived from the performance of underlying contracts. The revised measures add also a miscellaneous provision for "other claims that are based on contracts and involve monetary payments". According to such provision, the income rights of some financial products can be registered as the subject of pledge of accounts receivable.

The revised measures also introduce a procedure for registering to transfer accounts receivable, stating that "right holders shall file registration of transfer of accounts receivables for financing purpose in the system in accordance with the Revised Measures". In accordance with the revised measures, the 'pledger' and the 'pledgee' will include domestic and foreign entities and individuals. The registration should be handled by the pledger. Nevertheless, if the pledger is a foreign entity and is therefore unavailable, it may entrust an agent (for example, a law firm) to file the registration on its behalf.

To complete the registration, the pledger must submit all relevant information to the PBOC's official online registration platform. The revised measures also adjust the registration term of a pledge of accounts receivable and extend the time limit for notifying a pledger of any objection to its registration.

You can read the complete news at:

<http://www.pbc.gov.cn/goutongjiaoliu/113456/113469/3407871/index.html>

2. New Rules on EIT Withholding on China-Source Income Derived by Nonresident Enterprises

News Category: TAX
SAT Announcement No. 37 [2017]
Title: *Announcement of the State Administration of Taxation on Matters Concerning Withholding of Income Tax of Non-resident Enterprises at Source*
Promulgator: SAT
Promulgation Date: October 17th, 2017
Effective Date: December 1st, 2017

The Announcement n. 37 consists in an official interpretative guidance of the rules related to the administration of withholding tax on China-source income derived by non-resident enterprises handled pursuant to Articles 37, 39 and 40 of the *Law of the People's Republic of China on Enterprise Income Tax (Order of the President No. 64, effective on January 1st, 2008, "EIT LAW")*.

The document provides clarifications and guidance on the tax collection, and addresses solutions on certain practical issues, in addition to reducing the administrative and compliance burden on withholding agents and facilitating the coordination among the different tax authorities - to the benefit of the overall business environment.

The Announcement n. 37 is generally viewed to have a positive effect on the tax collection efficiency, and as highlighted in its main key figures summarized here below:

- Withdraws certain withholding tax document registration requirements, reducing the administrative burden

Announcement n. 37 repeals, among others, *Circular of the State Administration of Taxation on Issuing of the Interim Administrative Measures for Source-based Withholding of Enterprise Income Tax on Non-resident Enterprises (Guo Shui Fa [2009] No. 3)*; as consequence:

- ✓ It abolishes the requirement that a withholding agent must register business contracts or agreements (i.e. relevant to the "equity investment earnings such as dividends and bonuses, interest, rental income, use of franchise income, property transfer income, and other kinds of taxable income earned by non-resident enterprises from sources in China" as prescribed in Article 3 of *Guo Shui Fa [2009] No. 3*), involving non-resident payees, with the tax authorities, within 30 days from the date the contract is signed.

Notwithstanding, the withholding agent shall establish and maintain account books and archive relevant contractual documents for all the tax it has withheld; and the tax authorities may still request the parties involved thereto to provide relevant contracts and materials.

Moreover, it shall be stressed that other regulations remain in place, which require relevant contracts and agreements to be submitted to the tax authorities (e.g. *the Announcement of the State Administration of Taxation and State Administration of Foreign Exchange on Issues Concerning Taxation Record Filing for External Payment Projects Including Service Trade [2013] No. 40*, effective on September 1st, 2013).

- ✓ It abolishes the requirement that a withholding agents conducts final clearance and settlement procedures for agreements with multiple installment payments (i.e. previously required at least 15 days before the final installment payment was due to be paid).

- Clarifies the withholding tax calculations for disposable gains

Announcement n. 37 confirms and refines the clarifications on calculation of equity transfer

gains, previously set out in *Circular of the State Administration of Taxation on Strengthening the Administration of Enterprise Income Tax on Incomes from Equity Transfers of Non-Resident Enterprises (Guo Shui Han [2009] No. 698)*, effective on January 1st, 2008. The new guidance addresses the treatment also for incomes derived from transfer as "stock equity" such equity investment assets under Article 19.2 of the EIT LAW. It also observes that the base cost of the transferred equity, referred to as its "net value", must be adjusted for any equity value appreciation or depreciation which could be recognizable for tax purposes (i.e. "under the provisions of the competent finance authority and the competent tax authority under the State Council").

Announcement n. 37 also revises the provisions, previously under *Guo Shui Han [2009] No. 698*, regarding the calculation of the taxable income from equity transfers, where the currency of the proceeds is different from the currency in which the assets were acquired.

- Introduces more reasonable timeframes for withholding tax payments

Announcement n. 37 clarifies that, where a Chinese resident enterprises distributes dividends to the non-resident shareholder(s), the withholding tax obligation arises on the date of their actual payment "in practice".

Moreover, it clarifies that, in case of asset transfer consideration paid in installments, "the installments may be considered as part of the total cost that the non-resident enterprise has invested into the property until all the total cost has been recovered, and the remaining installments received thereafter by the non-resident enterprise shall be subject to withholding tax".

- Clarifies the withholding tax obligations of agents and overseas payment recipients

Conversely to the approach in *Guo Shui Fa [2009] No. 3*, to pursue the foreign payee for underpaid tax, Announcement n. 37 indicates that, where the withholding agent fails to withhold the tax, the competent tax authority order the withholding agent to withhold the tax payable and pursue the liability of the withholding agent.

Moreover, Announcement 37 makes distinction between situations where (i) where the tax can be regarded as having been withheld by the withholding agent but not remitted to the competent tax authorities, and (ii) where the tax was not withheld at all. Consequently, different levels of accountability shall apply for the withholding agent and the non-resident enterprise, which would affect the relative responsibilities in the recovery of the tax.

- Adjusted tax settlement timeframes for foreign payees

Announcement 37 provides that, where the withholding agent fails to declare and remit the withholding tax within seven days of the day on which the withholding obligation occurs, the non-resident enterprise that earns the income shall declare and pay the tax that has not been withheld to the competent tax authority at the place where the income occurs.

Where the non-resident enterprise fails to do so, the competent tax authorities may order it to declare and pay the tax within a prescribed period; however, if the non-resident enterprise voluntarily declares and pays the tax payable before the tax authority orders it to do so, it shall be deemed that such enterprise has paid the tax in time.

Consequently, for the non-resident enterprise, as long as it pays the tax payable within the time limit set by the tax authorities, it will be deemed that the withholding tax had been settled on time for penalty/levy calculation purposes.

You can read the complete news at:

<http://www.chinatax.gov.cn/n810341/n810755/c2878645/content.html>

3. Business Tax Officially Abolished and Updated Interim VAT Rules

News Category: TAX

Order of the State Council of the People's Republic of China No.691

Title: *Decision of the State Council on Abolishing the Interim Regulations of the People's Republic of China on Business Tax and Amending the Interim Value-Added Tax Regulations of the People's Republic of China*

Promulgator: State Council

Promulgation Date: November 19th, 2017

Effective Date: November 19th, 2017

The Regulations make improvements to the scope of value-added tax (VAT) levies, providing that taxpayers under the scheme of VAT in lieu of business tax, to be specific, the entities and individuals providing services and selling intangible assets and real property, shall become VAT taxpayers and pay VAT at specific tax rates, and also adjust the wordings of taxation scope related provisions in articles concerning the sales volume, taxable income, output tax, input tax and small-scale taxpayer.

Additionally, the Regulations reduce the previous 13% tax rate on the sale or importation of such goods as the grain, books and fodder to 11%, to have the rate aligned with the reform of streamlining VAT rates. Moreover, the Regulations update provisions on what kind of input tax can be deducted from the output tax and what kind of input tax cannot be deducted. At the same time, the transition policies currently implemented for some industries remain unchanged.

You can read the complete news at:

http://www.gov.cn/zhengce/content/2017-12/01/content_5243734.htm

4. SAT Clarifications on Tax Credit Proof for Enterprises' Foreign-contracted Projects

News Category: TAX

SAT Announcement No. 41 [2017]

Title: *Announcement of the State Administration of Taxation on Issues concerning Tax Credit Proof for Enterprises' Overseas Contracted Projects*

Promulgator: SAT

Promulgation Date: November 21st, 2017

Effective Date: November 21st, 2017

The Announcement applies to the final settlement and payment of enterprise income tax from the year 2017 and thereafter. It states that separation certificates (or copies) obtained by enterprises in accordance with relevant rules, could be used as the duty-paid proof or tax payment receipts for foreign-sourced income derived from overseas engineering projects, including but not limited to the engineering construction projects, infrastructure construction projects, etc.

According to the Announcement, in apportioning the income tax that has been paid abroad, the general contractor or the dominant enterprise in a consortium may fix reasonable ratios according to the income each party has obtained in practice, the work load and other relevant factors to allot the paid income tax to all subcontracting parties or all enterprises within the consortium for the tax credit purpose. The dominant enterprise in a consortium may be the party that receives the most income under the contract or as agreed upon in advance.

The Announcement also specifies requirements on filing a record of the separation certificate issued by the general contractor or the dominant enterprise in a consortium, lists what materials shall be safe kept for future reference, and provides for requirements on follow-up administration after the separation certificate has been obtained by interested parties.

You can read the complete news at:

<http://www.chinatax.gov.cn/n810341/n810755/c2929036/content.html>

5. SAT Provides Clarity on the Collection Scope of R&D Expenses for the Super Pre-tax Deduction Purpose

News Category: TAX

SAT Announcement No. 40 [2017]

Title: *Announcement of the State Administration of Taxation on Matters concerning the Collection Scope of Research and Development Expenses for the Purpose of Super Pre-tax Deduction*

Promulgator: SAT

Promulgation Date: November 8th, 2017

Effective Date: November 8th, 2017

The Announcement No. 40 applies to the annual final settlement from 2017 and thereafter, it centers on the collection scope of R&D expenses, and improves and specifies criteria to get information about some R&D expenses. Respective standards for the labor expenses paid to workers, expenses of direct input, depreciation expenses, and amortization of intangible assets are described in detail, and those for the design costs for new products, expenses incurred for the formulation of rules for new techniques, expenses of clinical trials conducted for new drugs at the R&D stage, and expenses of on-spot tests for exploration and development technologies are also clarified; furthermore, the standards for other relevant expenses are refined and other relevant policies are made clear as well.

The Announcement provides that requirements specified in the [Announcement \[2015\] No.97](#) regarding identifying the scope of personnel directly engaged in R&D activities and accurately collecting the labor expenses of personnel who are involved in multiple types of activities remain valid, and brings new provisions on the labor dispatching and equity incentives, stating that the scope of external R&D personnel could be broadened appropriately and the equity incentives awarded to R&D personnel are eligible for the super deduction.

You can read the complete news at:

<http://www.chinatax.gov.cn/n810341/n810755/c2922308/content.html>

6. China Adjusts Import Tariffs on Certain Consumer Goods

News Category: Customs

Shui Wei Hui No.25 [2017]

Title: *Customs Tariff Commission Notice on the Tariff Adjustment of some Consumer Goods Import Tariffs*

Promulgator: State Council Tariff Commission

Promulgation Date: November 22nd, 2017

Effective Date: December 1st, 2017

The Circular provides that certain consumer goods will be subject to import tariffs at the temporarily reduced rates from December 1, 2017.

The List of Adjustments to Temporary Import Tariff Rates on Certain Consumer Goods is distributed in the Circular, covering 187 items, such as "mineral water", "whisky", "other medicines (consisting of mixed or unmixed products for therapeutic or prophylactic uses)", "perfume and florida water", "other maquillage or cosmetics and skin care products", "silk-made shawls, kerchiefs, scarves and similar products", "wool blankets and travel blankets", "paintbrushes", "milk powders", "coffee machines", etc.

According the head of luxury goods at Exane BNP Paribas Mr. Luca Solca, "these import tariffs will open the domestic Chinese market to more international brands — which will be able to reduce their retail price in China. At the same time, this will bring more competition to local Chinese brands and will force them to up their ante".

You can read the complete news at:

http://gss.mof.gov.cn/zhengwuxinxi/zhengcefabu/201711/t20171123_2755506.html

7. Paperless Applications for Tax Reliefs in Nationwide Customs Offices from December 15

News Category: Customs

GAC Announcement No.58 [2017]

Title: *Announcement on Promoting the Paperless Applications for Tax Reduction and Exemption and Abolishing the Record-filing of Tax Reduction and Exemption*

Promulgator: GAC

Promulgation Date: December 10th, 2017

Effective Date: December 15th, 2017

With the Announcement No. 58, GAC decided to promote the paperless applications for tax reduction and exemption in nationwide customs offices and simultaneously abolish the record-filing regime for tax reduction and exemption, as of December 15, 2017.

According to the Announcement a tax reduction or exemption applicant or its agent can submit the application form for this purpose together with the electronic data about the accompanying documents through the tax reduction or exemption declaration system for QP pre-entry clients of China electronic ports, instead of submitting any written materials. In the meantime, it is made clear in the announcement that the applicant may provide materials concerning the subject qualification, project qualification, quota (quantity) of tax-free imports and other information to the customs at the same time when it initially handles formalities for tax reliefs for imported goods, but does not need to file a record for a policy-oriented project with the customs in advance.

You can read the complete news at:

<http://www.customs.gov.cn/customs/302249/302266/302269/758070/index.html>

8. China Lifts Ban on Italian Beef Imports

News Category: Customs

Title: *China removes ban on Italian beef after 16 years*

Promulgation Date: December 19th, 2017

China has lifted its ban on Italian beef after over 16 years, the country's agriculture ministry and its quality control authority have said. The return of Italian beef exports to China, however, will not be immediate as it will first be necessary to approve a protocol for the health and safety requirements.

The move comes after a Chinese delegation visited Italy in September to check out the health protection offered by the Italian food system. "We'll export quality Italian beef to China again after 16 years," said Agriculture Minister Maurizio Martina, who added "After the end of the ban on pork last year and on oranges at the start of 2017, we have overcome another historic hurdle".

You can read the complete news at:

http://www.ansa.it/english/news/2017/12/19/china-removes-ban-on-italian-beef-after-16-years-2_e2e918c2-a046-4f8a-8af3-ac141ce18c7a.html

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<http://it.mofcom.gov.cn/article/jmxw/201712/20171202692366.shtml>

9. Guidelines for the Standardization of Online Retails Issued

News Category: Corporate / Legal
Shang Dian Zi No.12 [2017]
Title: *Guidelines for the Standardization of Online Retails*
Promulgator: MOFCOM
Promulgation Date: November 11th, 2017
Effective Date: November 11th, 2017

The Guidelines objective is that the time effectiveness, comprehensiveness and applicability of standards for key fields will be notably increased, and relevant standards will play a stronger role in respect of online retailers' subject responsibilities, transaction behavior, the market order, competitive environment, quality of services, authentication and monitoring, quality traceability, and credibility construction, by the year 2020.

To achieve this end, the Guidelines establish 8 major tasks at 3 levels. First, at the level of general foundations, it is proposed to reinforce the development of standards for the management of online retails data and for the credit system; second, for better operating services, it is required to step up forming standards in respect of the mutual recognition of online retail e-permits, improvement of express delivery and logistics, and online payment security; and third, as to the supervision and administration, more efforts must be made to work out standards for the administration of the quality of online retail commodities traded online, the safe consumption, and the protection of intellectual property rights.

You can read the complete news at:
<http://www.mofcom.gov.cn/article/h/redht/201712/20171202681980.shtml>

10. 4th National Economic Census to be launched in 2018

News Category: Corporate / Legal
Guo Fa No.53 [2017]
Title: *Circular of the State Council on Launching the Fourth National Economic Census*
Promulgator: State Council
Promulgation Date: December 4th, 2017
Effective Date: December 4th, 2017

The 4th National Economic Census to be launched the current year will cover all legal persons, units engaging in industrial activities and privately-owned businesses, involved in the secondary and tertiary industries within the territory of China.

The information to be collected in the census includes basic situations, organizational structure, staff expenses, production capacity, financial status, production, operating and service activities, consumption of energy, research and development activities, deals concluded on e-commerce platforms, etc. of targets surveyed. The standard date for the forthcoming census falls on December 31, 2018 and periodic materials shall be those generated in 2018.

The Circular also requires that any entity or individual shall neither provide false or conceal data, refuse or postpone the submission of data, nor forge or tamper with the data to be collected for the census. Any materials obtained for the census purpose from entities and individuals shall be only used for the census, and cannot serve as the basis for any authorities to impose punishments on targets involved in the census. Moreover, all state secrets and the targets' trade secrets learnt when the census is underway must be kept confidential.

You can read the complete news at:
http://www.gov.cn/zhengce/content/2017-12/08/content_5245294.htm

11. Latest Criteria for Identifying Hidden Dangers of Major Work Safety Accidents in Industry and Trade Sectors Issued

News Category: HR

An Jian Zong Guan Si No. 129 [2017]

Title: *Criteria for Identifying Hidden Dangers of Major Work Safety Accidents in Industry and Trade Sectors (2017 Edition)*

Promulgator: State Administration of Work Safety

Promulgation Date: November 30th, 2017

Effective Date: November 30th, 2017

The recently issued Criteria apply to the identification of hidden dangers that are likely to result in major work safety accidents in the industry and trade sectors; where specific sectors in respect of hazardous chemicals, fire protection (conflagration) and special equipment, for example, have their own criteria to detect hidden dangers of major accidents, their criteria shall prevail.

Additionally, the Criteria specify that hidden dangers of major accidents for special categories involve sectors where there are risks of dust explosion, sectors where liquid nitrogen is used to realize refrigeration and sectors where operations are made in limited space, while hidden dangers of major accidents, classified by the industry, cover 8 industries, including the metallurgy, non-ferrous metals, construction materials, machinery, and light industry.

In particular, for the light industry, hidden dangers of major accidents of the industry-based type will be regarded as existent under any of 6 circumstances, such as "where food manufacturers using baking or frying facilities and equipment fail to have in place automatic alarm devices against overheating or take safeguards for insulation purposes".

You can read the complete news at:

http://www.chinasafety.gov.cn/newpage/Contents/Channel_22243/2017/1205/299365/content_299365.htm

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