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NEWSLETTER

LATEST NEWS FROM CHINA



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Latest news from China
Issue n.4 – April 2017

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1. SAT Issues New Special Tax Investigation Measures

News Category: Tax

SAT Announcement [2017] No. 6

Title: *Announcement of the State Administration of Taxation on Issuing the Administrative Measures for Special Tax Adjustment and Investigation and Mutual Consultation Procedures*

Promulgator: SAT

Promulgation Date: March 17th, 2017

Effective Date: Date: May 1st, 2017

On May 1st, 2017 new tax measures will go into place through the looked-for Announcement 6. The **Announcement of the State Administration of Taxation on Issuing the Administrative Measures for Special Tax Adjustment and Investigation and Mutual Consultation Procedures** is meant to improve the transfer pricing administration on related party transactions in relation to intangibles and intra-group services and provides different methods and principles for investigation and adjustment.

The document has 62 distinct Articles separated into 5 broad parts including special tax investigations, comparability factors and transfer pricing methods, specific provisions on intangible assets, specific provision on services and mutual agreement procedures.

The Announcement **incorporate with its technical clarifications some of the OECD's Base Erosion and Profit Shifting (BEPS) work**, it also **consolidates previous regulations on self-adjustments and both outbound payments and inbound receipts of royalty and service fees**, and write into regulation some of the existing practices adopted for TP audits.

As for the taxpayer's consolidation of self-adjustments, the Announcement states that if an enterprise adjusts and makes up taxes at its discretion, the tax authority may still carry out special tax adjustment and investigation; and if an enterprise requests the tax authority to confirm special tax adjustments, the tax authority shall

trigger procedures to launch a special tax investigation. This announcement gives clarity to taxpayers in understanding rationale of tax authorities when undertaking transfer-pricing investigations.

When conducting special tax audits, tax authorities will now pay special attention to **nine different types of risks** including - naming some - lower profit levels than industry average and risk criteria for enterprises controlled by a Chinese resident in tax jurisdictions with an effective tax rate below 12.5%, distributing none or minimal profit without any reasonable business need. Also, a business must maintain a reasonable level of profits if it participates in mono-production, distribution or contractual R&D for overseas party.

C&A Observations

Announcement 6 reflects the process of localization of BEPS Action Plan promoted by OECD and G20, in accordance to the principle that profit should be taxed where the economic activity takes place and the relevant value is generated. Announcement 6 has updated certain chapters of the *Provisional Administrative Measures on Special Tax Adjustment (Guo Shui Fa [2009] n.2)* (Circular 2) and other miscellaneous regulations governing transfer pricing, special tax adjustments and outbound related-party payments, specifying working procedures and methods for domestic special tax adjustment investigation, and normalizing the process and content for international mutual agreement procedure, intending to reconstruct a picture of PRC version of BEPS action scheme.

Notably, in addition to the five transfer pricing methods provided under Circular 2, (i.e. *Comparable Uncontrolled Price, Resale, Cost Plus, Transactional Net Margin and Profit Split*), Announcement 6 adds three new methods for assessment of pricing of intangible and share transactions: (a) Cost method, (b) Market method, and (c) Income method.

With the Announcement 6, taxpayers will be able to better understand the focus points and the rationale of tax authorities when undertaking TP investigations. Furthermore, providing that prior Chinese TP regulations were mostly focusing on outbound payments, we can see with the Announcement 6 the first steps taken towards administering the transfer pricing of outbound-investing Chinese headquartered companies expanding abroad.

The regulatory updates address a general expectation that tax authorities be more scrupulous with the special tax adjustment monitoring and investigation. Companies should be ready to deal with new challenges: in order to avoid or lower the risk of special tax adjustments, we suggest conducting self-assessments on relevant related-party transactions, particularly those with profit levels unaligned to the relevance of functions and risks assumed, and those with significant payments abroad of royalty and service fees.

You can read the complete news at:

<http://www.chinatax.gov.cn/n810341/n810755/c2538695/content.html>

2. SAT Promotes VAT E-Invoices

News Category: Tax

Shui Zong Fa [2017] No.31

Title: *Guiding Opinions of the State Administration of taxation on Further Doing Well in the Promotion of Electronic Ordinary Value-added Tax Invoices*

Promulgator: SAT

Promulgation Date: March 21st, 2017

Effective Date: Date: March 21st, 2017

The SAT made further encouragements for **e-commerce, telecommunications, courier services** and **public utility sectors** to use the electronic VAT invoice system. The electronic invoice system aims to reduce operating costs, save social resources and create a healthier and fairer tax landscape.

The Opinions provide parallel access to paper invoices. This means that the business issuing and the business receiving the electronic invoice can print a hard copy of the electronic VAT invoice. This printed copy will have the same legal validity of the ordinary VAT invoices printed by the tax authorities.

If a buyer requests a vendor an ordinary electronic VAT invoice, the hard copy shall still be provided by the vendor free of charge. Measures will be taken by the tax authorities for those vendors refusing to provide hard copies of invoices.

You can read the complete news at:

<http://www.chinatax.gov.cn/n810341/n810755/c1919901/content.html>

3. Clarifications on the Urban Maintenance and Construction Tax Refund of Period-end Excess VAT Policy

News Category: Tax
Cai Shui [2017] No. 17
Title: *Circular on the Urban Maintenance and Construction Tax, Education Surcharge and Local Education Surcharge Related Policies concerning the Refund of Period-end Excess VAT Paid by Integrated Circuit Enterprises*
Promulgator: MOF; SAT
Promulgation Date: March 23rd, 2017
Effective Date: Date: March 23rd, 2017

The Circular effects Urban Maintenance and Construction Tax and concerns the refund of period-end excess VAT paid by integrated circuit enterprises.

The Circular further details that for an integrated circuit enterprise eligible for policies on the refund of period-end excess VAT paid, the amount of the period-end excessively paid VAT that has been refunded shall be deducted from the taxable (levy) base for the urban maintenance and construction tax, education surcharge and local education surcharge.

You can read the complete news at:

http://szs.mof.gov.cn/zhengwuxinxi/zhengcefabu/201703/t20170323_2563535.html

4. GAC Modifies Protocol for Customs Declaring

News Category: Customs
GAC Announcement [2017] No. 13
Title: *Announcement on Revising the Standards for the Custom Declaration Registration on Import and Export of the People's Republic of China*
Promulgator: GAC
Promulgation Date: March 17th, 2017
Effective Date: March 29th, 2017

[GAC's Announcement No. 13 Announces Revised Customs Declaration Reporting Requirements](#)

The Announcement No. 13 makes **12 notable clarifications to the customs declaration reporting requirements** to ensure consistency with other customs regulations. These modifications will affect enterprises import and export operations. The bulletin modifies the declaration requirements for entities located in bonded zones, export processing zones, and other special customs supervision areas. **Enterprises within special customs areas must complete the registration form, while enterprises outside the special customs areas must complete the customs declaration form.**

[These revisions also include changes to payment confirmation of Royalty Fees.](#)

The document declares that rather than the importer confirming the "payment of royalties", the importer is now required to confirm the "payment of royalties related to the imported goods". Importers must assess whether the buyer has paid or is to pay a royalty fee to the seller, whether the royalty fee is related to the imported goods, and whether the royalty fee is included in the import amount declared by the importer.

You can read the complete news at:

<http://www.customs.gov.cn/publish/portal0/tab49564/info842813.htm>

5. China opens 7 New Free Trade Zones to Develop Central Western Regions

News Category: Corporate/Legal

Guo Fa [2017] No. 15; Guo Fa [2017] No. 16; Guo Fa [2017] No. 17; Guo Fa [2017] No. 18; Guo Fa [2017] No. 19; Guo Fa [2017] No. 20; Guo Fa [2017] No. 21
Title: *Overall Plan for the China (Liaoning) Pilot Free Trade Zone, Overall Plan for the China (Zhejiang) Pilot Free Trade Zone, Overall Plan for the China (Henan) Pilot Free Trade Zone, Overall Plan for the China (Hubei) Pilot Free Trade Zone, Overall Plan for the China (Chongqing) Pilot Free Trade Zone, Overall Plan for the China (Sichuan) Pilot Free Trade Zone, Overall Plan for the China (Shaanxi) Pilot Free Trade Zone*

Promulgator: State Council

Promulgation Date: March 15th, 2017

Effective Date: Date: Effective

The State Council has recently issued plans to open up **seven new free trade zones (FTZ)** throughout China. The seven new FTZs are each being set up to take advantage of specific geographical and industrial features. These new zones will be in Liaoning, Zhejiang, Henan, Hubei, Sichuan, Shaanxi and Chongqing Municipality.

The new FTZs bring the country's total number to 11 and their establishment, according to the Vice-Commerce Minister Wang Shouwen, is based on the operation mode and experiences gained from Shanghai and other existing coastal FTZs, with well-developed, state-level new bonded zones and high-tech parks.

The program comes in a needed time as many Chinese central and western regions are facing worsening economic pressures, aiming to promote these areas' development and speed up the [Belt and Road Initiative](#) building process.

<p>Chongqing Municipality</p> <p>Building inland logistics area for Belt and Road Initiative, Yangtze River economic belt</p>	<p>Henan</p> <p>Transportation and logistics center for bulk commodities trade, financial leasing and agriculture</p>	<p>Hubei</p> <p>Developing the Yangtze River Economic Belt through high-tech bases</p>
<p>Liaoning</p> <p>Revitalizing the industrial area in China's northeast region, foreign investment in petrochemicals, machine tools and mining industries</p>	<p>Shaanxi</p> <p>Development of Western China and "Belt and Road" initiative</p>	<p>Sichuan</p> <p>Serving as a region for coordinated development and opening up between inland and coastal areas</p>
	<p>Zhejiang</p> <p>E-commerce power capitalization, improving the province commodity capacity through trade liberalization</p>	

You can read the complete news at:

http://www.gov.cn/zhengce/content/2017-03/31/content_5182284.htm

http://www.gov.cn/zhengce/content/2017-03/31/content_5182288.htm

http://www.gov.cn/zhengce/content/2017-03/31/content_5182296.htm

http://www.gov.cn/zhengce/content/2017-03/31/content_5182299.htm

http://www.gov.cn/zhengce/content/2017-03/31/content_5182300.htm

http://www.gov.cn/zhengce/content/2017-03/31/content_5182304.htm

http://www.gov.cn/zhengce/content/2017-03/31/content_5182306.htm

6. Joint Reporting for Foreign-invested Enterprises Investments Operations

News Category: Corporate/Legal

Shang Zi Han [2017] N. 130

Title: *Circular on Joint Reporting of Annual Investment Operation Information of Foreign-invested Enterprises in 2017*

Promulgator: MOFCOM, MOF, SAT, AQSIQ, National Bureau of Statistics

Promulgation Date: March 31st, 2017

Effective Date: Date: April 1st, 2017

The Circular requires foreign invested enterprises in China to fill in and report their investment operations for the year 2016 through logging in the *National Application for Joint Reporting and Sharing of Annual Investment Operation Information of Foreign-invested Enterprises* between April 1st, 2017 and June 30th, 2017.

The relevant data will be shared among the departments of commerce, finance, tax, quality and technology supervision and statistics.

If the business was established in 2017, the enterprise will fill in and report its annual investment operation information from next year.

This Circular also states that the names of all foreign-invested enterprises engaged in the joint reporting and the investment operation information will be announced to the public through the *National Application for Joint Reporting of Annual Investment Operation Information of Foreign-invested Enterprises*.

You can read the complete news at:

<http://www.mofcom.gov.cn/article/h/redht/201703/20170302544314.shtml>

7. Policy Amendments Bring MNCs to Shanghai

News Category: Corporate/Legal

Hu Fu Fa [2017] No.9

Title: *Circular of the Shanghai Municipal People's Government on Issuing the Revised Regulations to Encourage Multinational Companies to Establish Regional Headquarters in Shanghai Municipality*

Promulgator: Shanghai Municipal People's Government

Promulgation Date: January 27th, 2017

Effective Date: February 1st, 2017

As China becomes more and more active in the global market, Shanghai Municipal People's Government recognizes that Shanghai plays a leading role in China's opening-up reform. Through amending the policy framework for encouraging multinational companies (MNCs) to set up regional headquarters (R-HQ) in Shanghai, with the Circular No. 9, **Shanghai government relaxes the business scope and the assessment criteria for regional headquarters**. The recognition conditions for R-HQ are as follows:

1. The Chinese enterprise is a Wholly Foreign-Owned Enterprise with the status of independent legal person.
2. The parent company thereof has total assets of no less than USD400 million; where an enterprise in the service industry establishes regional headquarters, the parent company thereof has total assets of no less than USD300 million;
3. The total amount of registered capital which has been paid over time in China by the parent company is no less than USD10 million and the number of enterprises both inside and outside China, which the regional headquarters is authorized by the parent company to manage, is no less than three; or the number of enterprises both inside and outside China, which the regional headquarters is authorized by the parent company to manage, is no less than six.

4. The registered capital thereof is no less than USD2 million.

If the enterprise basically meets the aforesaid conditions and makes outstanding contributions to the local economic development, the recognition may be discretionally taken into consideration.

In addition, Circular No.9 clarifies that WFOEs or branches that function as R-HQ's but cannot satisfy all of the assessment criteria may apply to hold status as **functional headquarters (F-HQ)**.

As functional headquarters, the WFOE or branch will be entitled to the same preferential policies with respect to entry and exit procedures in regard to the staff. The Circular also modifies the assessment criteria for functional headquarters by lowering the requirement on the number of entities established by F-HQ (from 3 to 2), but at the same time increasing the minimum registered capital requirement to not be less than 2 millions USD. These revisions will ultimately make it easier for branches to qualify and enjoy the benefits. Incorporating functional headquarters will attract more RHQ's to come to Shanghai and overall add to the development of the headquarters economy in Shanghai.

Moreover, Circular No. 9 removes the restriction limiting RHQ's to investment and management, fund management, R&D, products and procurement, and personnel training. RHQs will now have more autonomy in prioritizing their business activities in order to align with the group's overall strategy.

You can read the complete news at:

<http://www.shanghai.gov.cn/nw2/nw2314/nw2319/nw41149/u83aw151.html>

8. New Work Permit Policy Debuts Earlier in Shanghai

News Category: HR

Shanghai Municipal Human Resources and Social Security Bureau Notice

Promulgator: Shanghai Municipal Human Resources and Social Security Bureau

Promulgation Date: March 15th, 2017

Effective Date: Date: March 24th, 2017

Since March 25th, 2017, the *Shanghai Administration of Foreign Experts Affairs* is officially implementing the *Alien Employment Permit* (commonly known and referred to as *Work Permit*) application under the new immigration policy, earlier than the planned nationwide start date of April 1st, 2017.

The Shanghai Labor Bureau who has been processing the current *Alien Employment* applications has in fact stopped accepting any *Alien Employment License* and *Work Permit* applications under the old immigration policy starting as of March 25th, 2017 onwards.

All those employers in Shanghai who have foreign employees in China after this date must have been registered (<http://fwp.safea.gov.cn/>) to use the new online application system.

The new visa policy was launched on October 1st, 2016 with a trial in nine provinces/cities (i.e. Anhui, Beijing, Guangdong, Hebei, Ningxia, Shandong, Sichuan, Shanghai and Tianjin). It unifies the previous employment permit issued by the Labor Bureau, and the *Foreign Expert Certificate* issued by the Foreign Expert Bureau, into a single work permit and categorize the foreign nationals working in China into three A, B, C groups (for more details on the policy please refer to our news "*Easy as A,B,C – China's new Foreign Worker Classifications*" published in our [Monthly Newsletter Issue of October 2016](#)).

During the trial period, the new procedure has seen increased processing times due to extra steps and system implementation, and the

requirement to submit legalized educational diplomas and police clearance certificates has slowed the process further.

However, an invitation letter from the Chinese authorities is no longer required in support of a consular Z Visa application (only an invitation letter from the host company in China), a change which should ease the visa application process.

You can read the complete news at:

http://www.12333sh.gov.cn/201412333/xxgk/gsgg/201703/t20170315_1252875.shtml

9. SAFEA Issued a Service Guide to Duly Implement the New Work Permit for Foreigners

News Category: HR

Wai Zhuan Fa [2017] No. 36

Title: *Circular of the State Administration of Foreign Experts Affairs on Issuing the Service Guide on Licensing for Foreigners to Work in China*

Promulgator: SAFEA

Promulgation Date: March 29th, 2017

Effective Date: April 1st, 2017

The Leading Group Office of the State Council Administrative Approval System Reform announced that the State Administration of Foreign Experts Affairs (SAFEA) has implemented the integration of the *Foreigners' Employment Permit* and the *Work Permit for Foreign Experts Working in China*. This consolidated permit is now called the **Work Permit for Foreigners Working in China**.

To ensure that administration departments at all levels do a proper job at fully implementing licensing for foreign employees, SAFEA constructed the *Service Guide on Licensing for Foreigners to Work in China*, and all the local people's governments shall refer to it in the implementation based on practical circumstances.

You can read the complete news at:

<http://www.waizi.org.cn/law/18283.html>

10. AIB Expands Membership for the First Time to 13 New Prospective Members

News Category: Treasury/Foreign Exchange
Title: *AIB Welcomes New Prospective Members*
Promulgator: Asian Infrastructure Investment Bank
Promulgation Date: March 23rd, 2017
Effective Date: March 23rd, 2017

For the first time since its inception, on the 23rd of March the *Asian Infrastructure Investment Bank* (AIB) Board of Governors announced the extension of membership to 13 new member countries.

Now with a total membership of 70, the new regional approved applicants include **Afghanistan, Armenia, Fiji, Hong Kong and East Timor**, and the non-regional members include **Belgium, Canada, Ethiopia, Hungary, Ireland, Peru, Sudan** and **Venezuela**.

The 13 prospective members will officially join AIB once they complete the required domestic processes and deposit the first installment of capital with the Bank. The shares allocated to the new prospective members come from the Bank's existing pool of unallocated shares.

The addition of these 13 new applicants will contribute overall to inclusive global development and allow AIB to further its mission to improve economic and social development in Asia by investing in high quality, financially viable and eco-friendly infrastructure projects.

The new prospective members are at different stages of economic development, and they are testimony to the inclusiveness of the bank, especially after the globalization setbacks suffered in Europe and the United States. Quoting Wei Ling, director of Institute of Asian Studies at China Foreign Affairs University, "*the world badly needs new driving forces for globalization and regional integration.*"

You can read the complete news at:

https://www.aiib.org/en/news-events/news/2017/20170323_001.html

11. CBRC Vows to Enhance Regulatory Effectiveness

News Category: Treasury/Foreign Exchange
Yin Jian Fa [2017] No.7
Title: *Circular of the China Banking Regulatory Commission on Effectively Remediating Regulatory Weakness and Improving Regulatory Efficiency*
Promulgator: CBRC
Promulgation Date: April 12th, 2017
Effective Date: April 12th, 2017

The *China Banking Regulatory Commission* (CBRC) issued a Circular that includes 16 articles on strengthening regulatory areas of weakness and improving regulatory efficacy. The Circular sets out specific regulatory requirements for key issues and for baking financial institutions.

The articles are divided into 6 sections and cover topics including strengthening the development of regulatory systems, stepping up efforts to decrease risk, improving both on-site and off-site regulations, tightening information disclosure, intensifying regulatory punishment and improving accountability.

Specifically, the Circular aims to establish and optimize the equity management system to have greater knowledge of major shareholders and their affiliated parties as well as standardizing the management of affiliated transactions effected by shareholders.

You can read the complete news at:

http://www.cbrc.gov.cn/chinese/home/docDOC_ReadView/411D6C36DDCD452EAD92ED73B613A355.html

12. MOF Strengthens Funds Management of the Financial Sector

News Category: Treasury/Foreign Exchange
Cai Ku [2017] No.76
Title: *Guiding Opinions on Further Strengthening the Management of the Deposit of Funds by Finance Departments and Budget Entities*
Promulgator: MOF
Promulgation Date: March 31st, 2017
Effective Date: March 31st, 2017

In order to establish and clarify regulations and management of funds for budget units and departments of finance, the MOF created and distributed the "Guiding Opinions on Further Strengthening the Management over the Deposit of Funds by Departments of Finance and Budget Units".

The document states that the budget unit or finance department must select a bank to deposit funds, and stresses that, if any bank where funds are deposited is found undertaking transfer of benefits - as proved, the depositing entity shall withdraw all funds and the department of finance will disqualify the bank. Furthermore, the document also calls for strengthening the overall management of funds deposited into special financial accounts.

You read the complete news at:
http://gks.mof.gov.cn/zhengfuxinxi/guizhangzhidu/201704/t20170411_2578985.html

13. Hong Kong Expands the AEOI Agreements to 8 New Countries

News Category: HK
Title: *Hong Kong signs agreements with Portugal and South Africa on automatic exchange of financial account information in tax matters;*
Hong Kong signs agreements with six jurisdictions on automatic exchange of financial account information in tax matters
Promulgator: Information Services Department
Promulgation Date: April 3rd, 2017; March 17th, 2017

On March 17th, Hong Kong government signed agreements with six more jurisdictions: **Belgium, Canada, Guernsey, Italy, Mexico** and the **Netherlands**, for conducting a *Standard for Automatic Exchange of Financial Account Information in Tax Matters* (AEOI). On April 23rd, 2017, similar agreements were signed with two more countries, **Portugal** and **South Africa**, bringing the total number of Hong Kong's AEOI partners to 11, also including Japan, Korea and the United Kingdom.

The AEOI belongs to the wider *Common Reporting Standard* (CRS), introduced to help align tax reporting and ensure that the tax authorities are aware of the overseas financial holdings of their tax residents. If a Hong Kong financial institution determines through a due diligence review that its account holder (individual or entity) is a tax resident in a reportable jurisdiction, the institution will have to report certain of its account holder's details to the *Inland Revenue Department* (IRD). If requested, the IRD will then share these details with the relevant authority of that reportable jurisdiction. To be considered a reportable jurisdiction in HK means to have entered into a comprehensive double tax agreement or tax information exchange agreement for AEOI.

You can read the complete news at:
<http://www.ird.gov.hk/eng/ppr/archives/17040302.htm>
<http://www.ird.gov.hk/eng/ppr/archives/17031701.htm>

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C&A ADVISORS

Tax, Accounting & Advisory
斯纳安企业管理咨询

SHANGHAI

Centro,
Suites 2002-2003,
568 Hengfeng Road,
Zhabei District 200070,
Shanghai
Tel: +86 (21) 5298 5060
Fax: +86 (21) 5298 5061

BEIJING

Jianwai Soho n. 39,
Building 15, Suite 2208,
Middle East 3rd Ring Road,
Chaoyang District 100020,
Beijing
Tel: +86 (10) 5900 2721
Fax: +86 (10) 5900 1479

GUANGZHOU

Peace World Plaza,
Suite 2606 362-366,
Huanshi East Road,
Yuexiu District 510060,
Guangzhou
Tel: +86 (20) 8374 4399
Fax: +86 (20) 8374 1408

HONG KONG

Suite 2301, 23rd Floor,
Chinachem Hollywood Centre, 1-13
Hollywood Road Central,
Hong Kong S.A.R.
Tel: +852 3695 5170
Fax: +852 3568 6277

LONDON

1 Duchess Street, Suite 3,
4th floor, London W1W6AN
Tel: +44 (0) 207 5802 277
Fax: +44 (0) 207 6313 751