

China Tax Weekly Update

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Relevant industries: Internet industry
Relevant companies: Internet enterprises
Relevant taxes: N/A

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.

Market access for all investors to selected business sectors with an internet-relevant dimension – Public opinions sought on draft negative list

On 21 October 2016, the National Development and Reform Commission (NDRC) issued a notice to solicit opinions on the *Negative List for Market Access to the Internet Industry (First Batch, Trial)* (Draft for Public Discussion, the “Negative List”). The Negative List sets out 36 internet related activities in which investment/business operations in China are prohibited/restricted – 6 activities are prohibited, 30 restricted.

The Negative List identifies 7 business sectors in which there are internet-relevant dimension, namely: (i) information transmission, (ii) software and information technology services; (iii) finance; (iv) water conservancy, environment and public facilities management; (v) manufacturing; transportation, storage and postal services; (vi) leasing and commercial services; and (vii) culture, and sports and entertainment.

In this negative list, prohibited activities include but not limited to:

- Dissemination of the information of dangerous articles and the relevant fabrication method released through the internet;
- Internet lending information intermediaries conduct of fund-raising activities, guarantee activities, lending money to others, equity-based crowd-funding, etc.

Restricted activities of which relevant licenses or recordal filing procedures are required to be obtained or completed include but not limited to:

- Internet publishing services, (e.g. Zhihu Daily);
- Internet-booked taxi services, (e.g. Uber);
- Profit-making internet information services, (e.g. Baidu);
- Internet based audio-visual program services, (e.g. Youku);
- Financial activities conducted over the internet, (e.g., Ali pay);

For full details of the Negative List, please click [here](#) to access.

* NDRC and Ministry of Commerce (MOFCOM) jointly issued a *Draft of Negative List of Market Access (Trial)* ("the Draft") in March 2016 which covers all industries and sectors. The Negative List mentioned above is a specific one which focuses only on the internet industry. The March Draft of the general Negative List set forth 328 items of industries, areas and businesses which are subject to investment prohibitions or restrictions, including 96 items to which access is prohibited and 232 items to which access is restricted. Same as the current Negative List, the March Draft is also an overall negative list which applies to all foreign and Chinese investors. The March Draft has been piloted in 4 provinces/municipalities, namely Tianjin, Shanghai, Fujian and Guangdong. Please refer to our [China Tax Weekly Update \(Issue 14, April 2016\)](#) for details.

** For market access of foreign investors, both the *March Draft* and the *Guiding Catalogue of Foreign Investment Industries (Revised 2015)* shall be applied to. With regard to the new rules on market access of foreign investors in China, you may click [KPMG China Tax Weekly Update Issue 35, September 2016](#) and [Issue 39, October 2016](#) to understand more details.

Reference: GAC
Announcement [2016] No. 62
Issuance date: 29 October
2016
Effective date: 1 November
2016

Relevant industries: All
Relevant companies: All
Relevant taxes: Import and
Export Custom Duty

Potential impacts on
businesses:

- Operational costs reduced

You may click [here](#) to access
full content of the circular.

Customs duty administrative modernization advances

On 29 October 2016, the General Administration of Customs (GAC) issued GAC Announcement [2016] No.62 ("Announcement 62") to carry out a pilot reform on duty collection and administration starting from 1 November 2016. The reform is transitioning China Customs from traditional goods pre-review processes, under which reviews must be conducted before goods are released by Customs, to new post-review processes which are much more efficient. The main contents of the circular include:

Online self declaration and tax payment by enterprises	<ul style="list-style-type: none"> • The import/export enterprises shall truthfully complete the customs declaration forms. They must use the tax calculation tool in the online system to calculate payable duties. They must confirm the payable duties calculated by the system and submit this confirmation to Customs through the system. • After receiving confirmation of receipt from Customs, the import/export enterprises may then proceed with the duty payment procedures. If needed, paper duty payment notice can be printed out by the enterprises themselves at the place of the customs office. • The notice is only to be regarded as a limited tax payment certificate, rather than as an administrative decision letter issued by the Customs.
Post-review of duty- related items	<ul style="list-style-type: none"> • After release of the goods, Customs will conduct selective inspection on the duty-related items declared by the import/export enterprises. These include the reported price, classification, place of origin, etc. • Nonetheless, Customs still reserves the right that under special circumstances, the Customs may review the duty-related items before the release of the goods.

Post-review of duty- related items (Cont'd)

- Where an import/export enterprise voluntarily submits a written report to the Customs on its violation of Customs regulatory provisions, and accepts actions taken by the Customs, the Customs shall give lighter or mitigated administrative penalties. Administrative penalties could be waived for illegal acts which are not serious, have been corrected and do not result in harm. Late payment penalties may also be reduced or exempt for violation voluntarily disclosed and taxes voluntarily paid by the import/export enterprise.

This whole reform transitioning China Customs' traditional pre-review processes to new post-review processes will bring a range of convenience to import and export enterprises. As detention caused by disputes on valuation, classification and origin of goods decreases, customs clearance efficiency will be improved significantly, reducing enterprises' logistics costs. For more details of the reform and the potential impacts on businesses, please refer to our below China Tax Alert for details:

- [China Tax Alert: China Customs Authority Conducts Pilot of Independent Customs Declaration and Tax Payment for Imported Goods \(Issue 30, November 2016\)](#)

This reform is also in line with the across-the-board move from pre-approvals to big data-driven follow up procedures in all aspects of Chinese governmental administration, e.g., business set up procedures, tax administrations, etc. You may refer to our *China Tax Weekly Update* [Issue 9, March 2016](#) and [Issue 20, June 2016](#) for details.

Reference: GAC
Announcement [2016] No.61
Issuance date: 28 October
2016
Effective date: 1 November
2016

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 circulars.

New Customs Inspection Regulations – legal document format requirements clarified

As mentioned in KPMG *China Tax Weekly Update* [\(Issue 26, July 2016\)](#) and [\(Issue 38, October 2016\)](#), the State Council published the revised *Rules on Customs Inspection of the People's Republic of China* (State Council Order No. 670, "the Inspection Rules") on 1 July 2016. Soon afterwards, on 26 September 2016, the GAC issued the new *Measures for Implementation of the Inspection Rules* (Decree of the GAC No.230, "the Measures"). The Measures specify and refine various aspects of the operation and implementation of the Inspection Rules and went into effect on 1 November 2016 as the supporting regulations of the Inspection Rules.

To facilitate the implementation of the Measures, GAC issued GAC Announcement [2016] No.61 ("Announcement 61") on 28 October 2016. This is to clarify the format of legal documents referred in the Measures, which also came into force from 1 November 2016.

* With regard to the main changes and specific influence of the Measures, you may click the following link to access the relevant analysis by KPMG:

- [China Tax Alert: The General Administration of Customs issues the new Measures for Implementation of the Customs Audit Regulations and enterprises should take note of its key content \(Issue 29, June 2016\)](#)

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

Relevant industries: All
 Relevant companies:
 Customs' ACE
 Relevant taxes: N/A

Potential impacts on
 businesses:

- Operational costs reduced

You may click [here](#) to access full content of the circular.

More incentives for highly compliant taxpayers - customs

On 19 October 2016, 40 Chinese regulatory authorities, including NDRC, PBOC and GAC, etc., jointly signed a *Cooperation Memorandum to Grant Joint Incentives for Customs' Advanced Certified Enterprises (ACE)** ("the Cooperation Memorandum").

The Cooperation Memorandum clarifies which enterprises qualify for incentives, administrative measures, dynamic adjustment system, incentive measures and other related matters. The joint incentives for the Customs' Advanced Certified Enterprises mainly involve providing green channels by various government authorities, reducing inspection times or limiting inspection levels by certain authorities, prioritizing in customs clearance, simplifying procedures and reviewing times by various authorities, etc.

At present, there are about 3500 Customs' Advanced Certified Enterprises nationwide. This is just one percent of the total number of enterprises with import and export businesses. However, the value of imports and exports and import tax payments accounted for by the Customs' Advanced Certified Enterprises comes to about one-third of the total value and amount.

In addition, GAC is coordinating with other authorities to promote joint disciplinary punishments for dishonest enterprises. The related cooperation memorandum may be signed and implemented before the end of 2016.

* Advanced Certified Enterprise (ACE) is the highest credit rating for import/export enterprises by China Customs. ACEs will be able to enjoy preferential customs clearance benefits in China and in countries which China has mutual recognition agreements with (e.g., Korea, Singapore, etc.). With regard to the details of ACEs and other credit management measures by China Customs, you may click the following link to access:

❑ [China Tax Alert: China Customs released Provisional Measures on Credit Management of Enterprises \(Issue 28, November 2014\)](#)

** In July this year, 29 Chinese regulatory authorities, including the NDRC, SAT, People's Bank of China (PBOC) etc., has jointly signed a cooperation memorandum to grant more incentives to taxpayers with class-A tax credit rating. This includes 41 incentive measures in 18 areas such as project approval and management, tax services, allocation of financial funds, imports and exports etc. You may click KPMG [China Tax Weekly Update \(Issue 27, July 2016\)](#) for details.

*** The Central Government, NDRC and relevant authorities haven't published the full text of *the Cooperation Memorandum*, we will continue to follow up.

Reference: SAT
Announcement [2016] No. 67
Issuance date: 26 October
2016
Effective date: 1 December
2016

Relevant industries: All
Relevant companies: All
enterprises listed in Qianhu
Plan
Relevant taxes: CIT

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 "Thousand Enterprises Initiative" for co-operative tax compliance with large companies - requirements to submit financial statements clarified

In order to further promote tax services and the tax management of large enterprises, the SAT issued SAT Announcement [2016] No. 67 ("Announcement 67") on 26 October 2016. This is to clarify matters concerning the submission of financial statements upon corporate income tax (CIT) filing for the enterprises listed in the "Thousand Enterprises Initiative" * and their member enterprises. Announcement 67 will take effect from 1 December 2016.

- Announcement 67 emphasizes again that the "Thousand Enterprises Initiative" headquarters and their member enterprises across China shall submit their financial statements upon declaration for quarterly/annual CIT filing as well as other taxation materials may be required to be submitted by the tax authorities. Overseas member enterprises may be exempt from this requirement.
- Announcement 67 raises the new requirement that the "Thousand Enterprises Initiative" headquarters located within China shall submit their consolidated financial statements of each financial year prior to 31 May of the following year.

* "Thousand Enterprises Initiative" is a plan initiated by the SAT in 2015 targeting a few of the top large enterprises to enhance controls on the main source of fiscal revenues and lighten the burden on the small and medium size enterprises. Despite the use of the name the "thousand enterprises initiative", it is actually the top 500 multinational enterprises, China state-owned enterprises and private-owned enterprises, industry leaders and other key market players in the emerging industry who have been identified by the SAT as targets of the "Thousand Enterprises Initiative". With regard to improvement of tax services for large enterprises and other details of the "Thousand Enterprises Initiative", you may click KPMG [China Tax Weekly Update \(Issue 4, February 2016\)](#) for more details.

Reference: N/A
Effective date: N/A

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

Potential impacts on
businesses:

- Effective tax burden
reduced

You may click [here](#) to access
full content of the circulars.

Exchange of notes for China - Malaysia tax treaty

Based on a piece of news published on the website of the SAT, on 1 November 2016, China and Malaysia signed an *Exchange of Notes (EoN) to the Agreement between the Government of the People's Republic of China and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income* ("the China-Malaysia DTA"), in Beijing.

The *China-Malaysia DTA* was signed on 23 November 1985. Certain tax exemption treatment specified in the *China-Malaysia DTA* will be further clarified in the EoN. Based on the news, signing of the EoN will effectively reduce the tax burden and financing costs for cross-border taxpayers of both countries, and will promote the development of bilateral investment and economic & trade as well.

* The EoN is yet to be published by the SAT and we will keep an eye on this.

Reference: Zhong Shui Xie Fa [2016] No. 056
 Issuance date: 31 October 2016
 Effective date: N/A

Relevant industries: Tax agents industry
 Relevant companies: Tax agent firms
 Relevant taxes: N/A

Potential impacts on businesses:

- Compliance risks due to regulatory uncertainties decreased

You may click [here](#) to access full content of the circular.

China tax agents professional association releases new guidance for members

As mentioned in KPMG [China Tax Weekly Update \(Issue 32, August 2016\)](#), on 4 August 2016, SAT issued Shui Zong Han [2016] No. 389. This clearly outlines that local tax authorities shall not act beyond the relevant laws, regulations, department rules and SAT guidance, to collect tax assurance reports from taxpayers. (In the past, many local tax authorities require tax assurance reports in various cases, e.g., CIT annual filing, asset loss deduction for CIT purpose, etc.)

KPMG [China Tax Weekly Update \(Issue 38, October 2016\)](#) also mentioned that, on 26 September 2016, GAC issued *Measures for Implementation of the Rules on Customs Inspection of the People's Republic of China* ("the Measures "), which mentions that the Customs may entrust accounting firms, tax agent firms as well as other professional institutions that have the qualification and capacities on accounting and tax, to advise the findings on customs inspection.

Issuing reports on verification of annual declaration for CIT payment has long been the main business of tax agent firms. In order to guide the tax agent firms to change their business from issuing assurance reports to providing tax filing related advisory services, as well as provide guidance on customs inspection assistance services, on 31 October 2016, the China Certified Tax Agents Association (CCTAA)* issued Zhong Shui Xie Fa [2016] No. 056 ("Circular 56").

Three rules of professional tax practice, including *Regulation on Providing Annual CIT Filing on behalf of Taxpayers (Trial)*, *Regulation on Advisory services for Annual CIT Filing (Trial)*, and *Regulation on Assistance to Customs Inspection (Trial)*, were released under Circular 56.

Basing their guidance on the latest official tax policies in relation to annual CIT filings and customs inspection assistance, detailed above, the three rules of professional tax practice clarify standard working processes, the respective liabilities of the tax agent firms and taxpayers, and other matters. The three rules also provide model tax filing and tax advisory contracts, tax adjustment reports, engagement letters for customs inspection assistance, etc.

* CCTAA, founded on 28 February 1995, is a private members organization which is composed of Certified Tax Agents (CTAs) and tax agent firms. It is subject to the guidance and supervision of the Ministry of Civil Affairs and the SAT.

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