China Tax Weekly Update

ISSUE 43 | November 2016

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

Relevant industries: All
Relevant companies: Multinational enterprises
Relevant taxes: All

Potential impacts on businesses:

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

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Global Forum advances tax transparency agenda

Based on news published on the website of the OECD, the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) held its annual meeting in Tbilisi, Georgia on 2-4 November 2016. The meeting marked the completion of the first round of the Forum's peer review process, under which the level of compliance of members of the Global Forum (now numbering 137 jurisdictions) with the 2009 G20-endorsed international standard for exchange of information on request (EOIR).

The peer review process has been underway since the Global Forum was reformed in 2009. It assesses both (i) the legal and administrative framework for supporting EOIR in a given jurisdiction, and (ii) the actual functioning of EOIR in practice. All of the countries under peer review have now gone through the two stages of the process (for the 17 latest reports click here). A second round of peer reviews is now to be applied to the countries, with an even higher standard applied, including an assessment of the availability of and access by tax authorities to beneficial ownership information of all legal entities and arrangements.

Attention at the Global Forum is now moving from EOIR, which requires a tax authority to initiate an information exchange, to the standard for automatic exchange of information (AEOI), under which far larger quantities of tax information are transmitted automatically between tax authorities. The OECD's proposal for global standard on AEOI was endorsed by the G20 in 2013. The OECD subsequently developed this as the Common Reporting Standard for Automatic Exchange of Financial Account Information in Tax Matters (CRS), modelled on the US FATCA arrangements, and this was endorsed by the G20 in 2014.

Over 100 countries have committed to CRS (some starting exchanges in 2017 and others in 2018) and at the November 2016 Global Forum meeting it was noted that 97% of the jurisdictions committed to exchanging information in 2017 are now ready for these exchanges. Many countries will be making these exchanges on the legal basis of the CRS Multilateral Competent Authority Agreement (MCAA), which has 85 signatories, while others will make exchanges on the basis of parallel bilateral arrangements. Governance arrangements for the Common Transmission System for exchanging data were also agreed at the meeting.

China committed to CRS already in 2014 and subsequently signed the CRS MCAA. China is committed to engage in the first information exchange in September 2018. though it has yet to nominate the countries with which it wishes to engage in information exchange through the CRS MCAA.

To prepare for the 2018 start of CRS exchanges, on 14 October 2016 the State Administration of Taxation (SAT) published a discussion draft on "Due Diligence Administrative Measures on Non-residents' Financial Account Information in Tax Matters" for public comments ("the Discussion Draft"). The Discussion Draft published provides the principles and procedures for Chinese financial institutions in identifying the accounts of non-residents and collecting the relevant information. For more information, you may click our *China Tax Weekly Update (Issue 40, October 2016)* for details.

Reference: Decree of the President No. 53
Issuance date: 7 November 2016
Effective date: 1 June 2017

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

Potential impacts on businesses:

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

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China adopts law on cybersecurity

Based on news published on the official website of the central government, China's supreme legislature, the National People's Congress, in November 2016 adopted a Cybersecurity Law to safeguard sovereignty on cyber space, national security and the rights of citizens. The Cybersecurity law will come into effect from 1 June 2017.

The Cybersecurity Law, consists of 79 articles in 7 chapters and provides various security obligations for network products, service providers and network operators. The law further strengthens the protection of personal information, sets up a system to protect the security of key information infrastructure facilities, and establishes rules for cross-border transfer of vital data of key information infrastructure facilities.

The following contents, related to key information infrastructure facilities, may have a significant impact on foreign investors:

- China has adopted a graded system for cybersecurity protection, and the State will pay particular attention to key information infrastructure facilities (KIIFs) of the following important industries and fields: public communication and information services, energy, transportation, water conservancy, finance, public services, e-government, etc.
- In addition to the above, KIIFs that could pose a particular risk to national security, the national economy or the people's livelihood and public interest, in the instance of damage, malfunction or data breach, will also be particular focus areas.
- Any purchase of network products and services by an operator of KIIFs, which may pose a risk to national security, is subject to national security review. The review will be conducted by the Cyberspace Administration of China (http://www.cac.gov.cn/) together with competent departments of the State Council.
- The personal information and key data collected and generated in China by the operators of KIIFs should be stored within China. Information which needs to be provided to overseas parties for business reasons shall be subject to security evaluation. The security evaluation shall be carried out based on the measures that are developed by the Cyberspace Administration of China and the State Council, unless otherwise provided by laws and administrative regulations.
- The applicable scope of the KIIFs and the measures for the security protection are yet to be developed by the State Council.

Reference: Cai Shui [2016] No. 106
Issuance date: 4 November 2016
Effective date: 1 May 2015

Relevant industries: Financial sector
Relevant companies: Banking financial institutions
Relevant taxes: CIT

Potential impacts on businesses:

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

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Tax deductions for deposit insurance premiums clarified

On 4 November 2016, the Ministry of Finance (MOF) and the SAT jointly issued Cai Shui [2016] No. 106. This clarifies the deduction of deposit insurance premium for corporate income tax (CIT) purposes, which shall retrospectively take effect from 1 May 2015.

- Deposit insurance premiums that are paid at a deposit insurance premium rate of less than 0.016% are allowed to be deducted by banking institutions from their taxable income for CIT calculation purposes. The excess over 0.016% will not be allowed for CIT deduction purposes.

  (Banking and financial institutions taking deposits must pay premium once every six months. They must, before January 20 and July 20 each year, pay premiums into a dedicated deposit insurance fund account, opened by the operations office of the People's Bank of China (PBOC).)

- With regard to a banking or financial institution that fails to pay premiums on time and in full as required, the head office and branch offices of the PBOC may disclose publicly the identities of the director and the directly liable personnel of the policy holder. It may also impose an overdue fine of 0.05% of the due premium on a daily basis for the premiums owed. The fine shall not be deducted for CIT purposes.

Reference: Cai Guan Shui [2016] No. 45
Issuance date: 17 October 2016
Effective date: 1 January 2016

Relevant industries: Coalbed methane exploration and development industry
Relevant companies: Enterprises engaged in coalbed methane exploration and development
Relevant taxes: Import Customs Duty / VAT

Potential impacts on businesses:

- Effective tax burden may be reduced

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Preferential import tax policy for fracking equipment

On 17 October 2016, the MOF, the SAT, and the General Administration of Customs (GAC) jointly released the *Notice on Import Tax Exemption for Imported Supplies Under Coalbed Methane Exploration and Development Projects During the 13th Five-Year Plan ("the Notice").* The Notice clarifies that:

- China United Coalbed Methane Co., Ltd. and its collaborators at home and abroad will, in case of conducting any coalbed methane prospecting and exploiting programme within China, be exempted from the import tariffs and import-stage VAT from 1 January 2016 to 31 December 2020 for the imported equipment, apparatus, parts and accessories and special instruments directly used in prospecting and exploiting which have not be produced in China or whose domestic counterparts fail to meet the requirements (see the List of Tariff-Exempted Materials in the Notice).
- Other domestic enterprises engaged in coalbed methane exploration and development shall file an application to the MOF before the import takes place. They may enjoy the aforesaid preferential import tax policy with the confirmation of MOF, SAT and GAC.
- The materials that are temporarily imported and are imported by way of lease for exploration and development projects may be exempted from import tariffs and import-stage VAT if they fall into the scope of the List of Tariff-Exempted Materials.

Reference: Cai Shui [2016] No. 113
Issuance date: 4 November 2016
Effective date: 1 November 2016

Relevant industries: All
Relevant companies: Import/export enterprises
Relevant taxes: VAT

Potential impacts on businesses:
- Risks of being challenged due to non-compliance issues reduced

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Export tax refund rates improved

On 4 November 2016, the MOF and the SAT jointly issued Cai Shui [2016] No. 113 ("Circular 113"). This raises the export tax refund rate for certain products (such as electromechanical products and petroleum products). Circular 113 takes effect from 1 November 2016, and provides for the following:

- Raises the export tax refund rate to 17% on cameras, video cameras, internal combustion engines, gasoline, aviation kerosene, diesel oil, and other products (418 items in total). Click here for the list of all products involved. (Previously, most of products in the list were subject to an export tax refund rate of approximately 13%. The change means a full refund of the entire VAT of 17% on such products. Historically, there was always some "tax leakage" on exports, with full tax refunds being rare.)
- Taxpayers shall check the export date on the customs declaration forms for exports to see whether the exports can apply to the export tax refund rate provided in Circular 113.

Prior to this, the SAT had clarified new export refund rates for 2016 (Edition D for 2016, Shui Zong Han [2016] No. 553) on 31 October 2016. The edition D has updated on the export tax refund rates for the commodities on which tax policies have recently been changed, including cosmetics (you may refer to KPMG *China Tax Weekly Update (Issue 38, October 2016)*).

* With regard to the adjustment of export tax refund rate for 2016, please refer to KPMG *China Weekly Update (Issue 33, August 2016)* and *(Issue 39, October 2016)* for details.

Vehicle purchase tax exemption for public buses

As mentioned in KPMG *China Tax Weekly Update (Issue 33, August 2016)*, on 25 July 2016, the MOF and the SAT jointly issued Cai Shui [2016] No. 84, which stipulates that the buses and trolley buses purchased by urban public transport enterprises shall continue to be exempted from vehicle purchase tax, effective from 1 January 2016 to 31 December 2020. On 25 October 2016, the SAT and the Ministry of Transportation jointly issued Shui Zong Fa [2016] No. 157, which further clarifies the documentation requirements for urban public transport enterprises dealing with the authorities for tax exemption formalities.

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Vehicle purchase tax exemption for specialized vehicles

As mentioned in KPMG *China Tax Weekly Update (Issue 27, July 2016)*, on 30 June 2016, the SAT issued Announcement [2016] No. 43 ("Announcement 43") to clarify certain issues in relation to exemption of vehicle purchase tax on non-transport vehicles installed with fixtures (such as fire engines, excavating machinery, etc.). This includes the scope of vehicles subject to exemption, tax-free treatment etc. Announcement 43 shall take effect from 1 August 2016.

According to Announcement 43, on 8 November 2016, the SAT compiles an atlas of tax-exempted non-transport vehicles installed with fit out for the current period (5th edition in 2016, total No. 52).

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Consumption tax clarifications for cigarettes

On 28 October 2016, the SAT issued Shui Zong Han [2016] No. 539 ("Circular 539"). This clarifies the minimum taxable value of certain cigarettes for consumption tax purposes. Circular 539 takes effect from 1 October 2016.

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