China Tax Weekly Update

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Reference: SAT and other five authorities Announcement [2017] No. 14
Issuance date: 9 May 2017
Effective date: 1 July 2017

Relevant industries: All
Relevant companies: Financial institutions, non-resident individuals and enterprises
Relevant taxes: IIT / CIT

Potential impacts on businesses:

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

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Measures for tax information exchange rollout in China

As highlighted in KPMG *China Tax Weekly Update (Issue 40, October 2016),* in 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 comment ("the Discussion Draft"). The rules contained in the Discussion Draft form a key element of China's efforts to implement the global "Standard for Automatic Exchange of Financial Information in Tax Matters" ("AEOI Standard"), also referred to as the Common Reporting Standard (CRS). The Discussion Draft rules were finalized and issued on 9 May 2017, as set out below.

CRS was developed by the OECD under a mandate from the G20 and the "Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information"("CRS MCAA") was developed as a legal basis on which to conduct CRS information exchanges. The CRS MCAA was officially signed by the SAT in December 2015 though China is yet to nominate the bilateral information exchange relationships that it wants to activate through the CRS MCAA.

According to the CRS implementation plan timeline set out in the Discussion Draft, financial institutions in China are to conduct due diligence procedures beginning from 1 January 2017. (This date was delayed to 1 July 2017 in the finalised Measures). They must identify financial accounts of non-resident individuals and enterprises, collect and report the relevant information to SAT. Such information will be exchanged by the SAT with the competent tax authorities of other jurisdictions on a regular basis. China is expected to engage in the first information exchange in September 2018.

The Discussion Draft was finalized as the "Measures on the Due Diligence of Non-resident Financial Account Information in Tax Matters" (the "Measures"), and Announcement No. 14 was issued on 9 May 2017. It was jointly issued by the SAT along with the Ministry of Finance (MOF), Peoples' Bank of China (PBOC), China Banking Regulatory Commission (CBRC), China Insurance Regulatory Commission (CIRC) and China Securities Regulatory Commission (CSRC). The Measures will be in force from 1 July 2017. Financial institutions are required to log-on to the SAT's website to complete their registration for CRS purposes by 31 December 2017 and then subsequently provide annual reporting of the required financial account information by 31 May each year.

There is no significant change between the Measures and the Discussion Draft. Definitions that are used in the Measures, such as "Financial institutions", "Financial assets", "Account holder", "Passive non-financial entity" as well as due diligence procedures and reporting requirements are basically in line with the Discussion Draft. The Measures clarify, inter alia, that:

- Financial institutions are required to conduct due diligence work, including, inter alia: (i). financial institutions which accept deposits from the public (e.g. commercial banks, rural credit cooperative), and policy banks; (ii). securities companies; (iii). futures companies; (iv). securities investment fund management companies, privately-offered fund management companies, and partnership enterprises engaging in privately-offered fund management business; (v). insurance companies engaging in the business of insurance with cash value or annuity, as well as insurance asset management companies; (vi). trust companies. Financial asset management companies, finance companies, financial leasing companies, auto finance companies, consumer finance companies, money brokerage companies, securities registration and clearing organisations are not required to conduct the due diligence work.
- “Financial accounts” broadly include a deposit account, custodial account, investment account, partnership interest, beneficial right of a trust as well as an insurance contract or annuity contract with cash value.
- See detailed due diligence procedures in the below table：

<table>
<tr><th colspan="3">Types of Accounts</th><th>Description</th><th>Due Diligence Procedures</th><th>Key dates</th></tr>
<tr><td rowspan="3">Individual</td><td colspan="2">Newly-opened</td><td>Opened after 1 July 2017</td><td>Review information provided on the self-certification form is reasonable or not</td><td>Starting from 1 July 2017</td></tr>
<tr><td rowspan="2">Pre-existing</td><td>Low-net worth</td><td>Aggregate balance of no more than US$ 1 million as of 30 June 2017</td><td>Electronic record search</td><td>To be completed by 31 December 2018</td></tr>
<tr><td>High-net worth</td><td>Aggregate balance exceeding US$ 1 million as of 30 June 2017</td><td>Electronic/paper record search + enquiry with client relationship manager</td><td>To be completed by 31 December 2017</td></tr>
<tr><td>Entity</td><td colspan="2">Newly-opened</td><td>Opened after 1 July 2017</td><td>Review information provided on the self-certification form is reasonable or not</td><td>Starting from 1 July 2017</td></tr>
</table>

Types of Accounts			Description	Due Diligence Procedures	Key dates
Entity	Pre-existing	small	Aggregate balance of no more than US$ 0.25 million as of 30 June 2017	N/A	N/A
		other	Aggregate balance exceeding US$ 0.25 million as of 30 June 2017	Record search and self-certification for certain accounts	To be completed by 31 December 2018

* With regard to the detailed content and impact of the Measures, you can read the following KPMG publications:

- *China Tax Alert: Measures on the Due Diligence of Non-resident Financial Account Information in Tax Matters (AEOI Standard / CRS in China)* (Issue 16, May 2017)
- *China Tax Alert: Public Consultation for the Draft Measures on the Due Diligence of Non-resident Financial Account Information in Tax Matters (Issue 32, November 2016)*

** For more information about CRS and AEOI, please see the following KPMG Publication:

- *China Tax Weekly Update (Issue 19, May 2017)*

Reference: N/A
Issuance date: 23 May, 2017
Effective date: N/A

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

Potential impacts on businesses:
- Risks of being challenged due to cross-border tax anti-avoidance arrangement increased

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OECD discussion draft on hard-to-value intangibles

A posting to the OECD website on 23 May 2017 invites public comments on a discussion draft on pricing transfers of hard-to-value intangibles ("HTVI") described in Chapter VI of the Transfer Pricing Guidelines. This continuing post-BEPS OECD work was mandated in the Final Report on Actions 8-10 of the BEPS Action Plan ("Aligning Transfer Pricing Outcomes with Value Creation").

This discussion draft does not yet represent a consensus position of the Committee on Fiscal Affairs. It sets out principles that should underlie the TP approach to HTVI, aiming for a balance, between tax authorities and taxpayers, in the manner in which 'information asymmetries' are dealt with. This should allow tax authorities, in certain circumstances, to use data on 'ex post' outcomes to revise the valuation of transferred intangibles, while protecting taxpayers from inappropriate use of hindsight to undo related party deals. The draft provides several examples illustrating the preferred application of the HTVI approach, and addresses the interaction between the approach to HTVI and the mutual agreement procedure (MAP) under an applicable treaty. Interested parties are invited to send comments on this discussion draft by 30 June 2017.

Reference: SAT Order No. 41
Issuance date: 16 May 2017
Effective date: 1 July 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.

Rules on formulation of local tax authority tax guidance

On 16 May 2017, the SAT issued revised the Administrative Measures for the Formulation of Tax Regulatory Documents (SAT Order No. 41, the revised "Measures"). This amends the old Measures issued in 2010.

"Tax regulatory documents" refer to documents formulated and publicized by the tax authorities at county-level all the way up to provincial level (i.e. to the level just beneath the SAT). "Tax regulatory documents" are official documents regulating the rights and obligations of taxpayers**,** where the rules set out are of general binding effect and can be repeatedly applied within a given tax jurisdiction. This is meant to cover documents containing generally applicable tax rules but exclude documents issued by tax authorities which are directly solely at the affairs of a particular taxpayer (e.g. an opinion sent from one tax authority to another on the handling of a particular taxpayer's case).

In comparison with the old Measures, the revised Measures make several notable adjustments, including:

- The new Measures deal with cases where replies are made by superior tax authorities to tax authorities at a lower level (e.g. from provincial to municipal level), in response to queries on the proper application of tax laws, regulations and rules to taxpayers, and the guidance is intended to be of general effect for taxpayers. The new Measures make clear that, in such cases, a separate document for the generally applicable rule needs to be prepared and this needs to conform to certain specifications. This general guidance document needs to be publically released.
- Tax regulatory documents which will have a significant impact on taxpayers are required, by the new Measures, to be opened up to public comment. There is an exclusion whether the documents need to be kept secret before implementation – the drafting department should consult with the policy department within the relevant tax authority on such cases.
- Tax regulatory documents must, per the new Measures, to be issued in the form of an "Announcement" in order to have enforcement effect.

The revised Measures will be in force from 1 July 2017, and the old Measures will be abolished at the same time. The new Measures are a further step by the SAT towards improving transparency and consistency in China tax rule-making processes.

Reference: SAT Announcement [2017] No.15
Issuance date: 10 May 2017
Effective date:7 May 2017

Relevant industries: All
Relevant companies: Companies with overseas loans
Relevant taxes: CIT

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

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SAT clarifies interest WHT relief in China-Portugal DTA

As highlighted in KPMG *China Tax Weekly Update (Issue 15, April 2017)*, the SAT on 7 April 2017 signed an agreement with Portugal to clarify and enhance the interest WHT exemption provisions under the China-Portugal DTA.

On May 10, 2017, the SAT issued Announcement [2017] No. 15 adding a list of institutions benefitting from the interest WHT exemption, including:

- In China, the following institutions are newly added for the tax exemption:
  - The National Council for Social Security Fund;
  - The China Investment Corporation;
  - The China Export & Credit Insurance Corporation;
  - The China Development Bank.
- In Portugal, the newly added institution is the Central Bank of Portugal.

The agreement enters into effect from 7 May 2017 and applies to taxable activities occurred after 1 June 2017.

Reference: N/A
Issuance date: 19 May 2017
Effective date: N/A

Relevant industries: All
Relevant companies: Companies assign employees to Spain
Relevant taxes: N/A

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

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

China-Spain social security agreement signed

A news posting to the website of Ministry of Human Resources and Social Security (MOHRSS) indicated that China has signed an Agreement on Social Security with Spain ("China-Spain social security agreement") on May 19 2017.

According to the China-Spanish social security agreement, where a Chinese enterprise assigns employees to work in Spain, an exemption may be obtained from payment of social security contributions in Spain, such as pension insurance, unemployment insurance. These would otherwise be mandatory for the assigned employees and the Chinese enterprise. The same exemption applies for Spanish companies and assigned employees in China. The agreement will come into effect upon completion of required approval procedures by the both countries.

* The full text of the agreement are yet to be released by the relevant authorities and we will follow up on this.

** China has been rapidly building up its network of bilateral social security agreements and has so far signed them with 9 countries, including Germany, South Korea, Denmark, Finland, Canada, Switzerland, Netherland, France and Spain.

Reference: N/A
Issuance date: 16 May 2017
Effective date: N/A

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

Potential impacts on businesses:

- Operational costs reduced

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

Mainland China-Hong Kong Bond Connect

A new posting to the website of the People's Bank of China (PBOC) noted that, on 16 May 2017, the PBOC and the Hong Kong Monetary Authority (HKMA) issued the joint Announcement on the launch of the Bond Connect scheme to operate between Mainland China and Hong Kong ("Bond Connect").

Bond Connect is an arrangement that will enable Mainland and overseas investors to transact in bonds tradable on the Mainland and Hong Kong bond markets. This utilises a connection between the Mainland and Hong Kong "Financial Infrastructure Institutions"*. Bond Connect is a new counterpart to the earlier established Stock Connect arrangements.**

Northbound Trading will commence first in the initial phase, i.e. overseas investors from Hong Kong and other countries and areas (overseas investors) will be permitted to invest in the China Interbank Bond Market. The Hong Kong and Mainland Financial Infrastructure Institutions will handle trading, custody, settlement etc.

Southbound Trading will be explored in due course, i.e. Mainland investors will later be permitted to invest in the Hong Kong bond market. This would facilitate "going out" domestic institutions to invest in overseas bond markets.

The Hong Kong and Mainland Financial Infrastructure Institutions are instructed to actively take forward preparations for Bond Connect. Bond Connect will be formally launched after relevant rules and system development have been finalised, market participants' practical needs have been suitably addressed, relevant regulatory approvals have been granted and all other necessary preparations have been completed. Business media commentators anticipate Bond Connect to be formally launched in the course of summer 2017. The earlier launch of the Stock Connect schemes was accompanied by SAT announcements providing for beneficial tax treatment for inbound and outbound investors – it remains to be seen whether equivalent SAT announcements will accompany the Bond Connect launch.

* Mainland financial infrastructure institutions include China Foreign Exchange Trading System – National Interbank Funding Center, China Central Depository & Clearing Co., Ltd., Shanghai Clearing House; Hong Kong financial Infrastructure Institutions include Hong Kong Exchanges and Clearing Limited, Hong Kong Central Moneymarkets Unit.

** Mutual access between the stock markets of Mainland China and Hong Kong was established through Shanghai-Hong Kong Stock Connect and Shenzhen-Hong Kong Stock Connect, implemented in 2014 and 2016, respectively. For more details about the Shanghai-Hong Kong Stock Connect and Shenzhen-Hong Kong Stock Connect and their transaction tax treatment, please read the following KPMG publications:

- *China Tax Weekly Update (Issue 46, December 2016)*
- *China Tax Alert: Shenzhen-Hong Kong Stock Connect – Transaction tax treatment clarified (Issue 1, January 2017)*

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