KPMG

China Tax Weekly Update

ISSUE 30 | August 2017

Reference: N/A
Issuance date: 28 July 2017
Effective date: N/A

Relevant industries: All
Relevant companies: All
Relevant taxes: All

Potential impacts on businesses:
- Operational costs reduced

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China announces measures to boost foreign investment

On 28 July 2017, an executive meeting of the State Council outlined a series of measures to further boost foreign investment in China. The most notable are:

- The foreign investment "Negative List" approach will continue to be rolled out and foreign investment laws improved [See KPMG *China Tax Weekly Update (Issue 25, June 2017)* and *(Issue 4, January 2017)* for details].
- Reinvestment of distributed profits of foreign invested enterprises will be permitted without imposition of dividend withholding tax, and pilot city Corporate Income Tax (CIT) incentives for advanced technology services enterprises (ATSEs) will be expanded nationwide [See KPMG *China Tax Weekly Update (Issue 47, December 2016)* for details].
- Relaxation/elimination of requirements for foreign investors to have Chinese co-investors for their China investment in manufacturing and services sectors. Local governments are encouraged to promote the establishment of multinational enterprise ASPAC regional headquarters in China with local tax incentives, and efforts will be made to enhance the protection of foreign enterprise intellectual property rights [See KPMG *China Tax Alert (Issue 23, August 2017)* and *China Tax Alert (Issue 9, March 2017)* for details].
- Further development of national (high tech) development zones with facilitation of land grants to foreign invested projects, and provision of financial support to technology and green projects in western and northeast China [See KPMG *China Tax Weekly Update (Issue 8, March 2017)* for details.]
- Streamline the working permit/visa process for foreigner workers [See KPMG *China Tax Alert (Issue 12, May 2017)* for details].

During the State Council meeting, the other measures were also set out for stimulating private investment. These include, inter alia:

- Private enterprises will be encouraged to participate in key projects, such as "Made in China 2025", and to participate in infrastructure and public utilities construction projects, for example, through public-private partnerships ("PPP") (See linked KPMG publication on tax policies for PPP projects).
- Improve credit grading system for private enterprises for bank lending purposes. China recently reached an agreement with the US to facilitate the operation of foreign credit rating agencies in China. This was reflected in the new 2017 Catalogue Guiding Foreign Investment [See KPMG *China Tax Alert (Issue 21, June 2017)* for detail on the new Catalogue].

- Continue to increase financial support to small and medium enterprises, and technological innovation-based enterprises. This will build on recent policy innovations, such as the new tax incentives for venture capital enterprises investing in science and technology enterprises at seed capital or start-up stage [See KPMG *China Tax Alert (Issue 15, May 2017)* for details].

Reference: Guo Ban Fa [2017] No. 69
Issuance date: 18 July 2017
Effective date: N/A

Relevant industries: All
Relevant companies: SOEs administered under central government
Relevant taxes: N/A

Potential impacts on businesses:

- Compliance risks due to regulatory uncertainties reduced

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Implementation plan on central SOE reform

On 18 July 2017, the State Council issued the Guo Ban Fa [2017] No. 69. This sets out the Implementation Plan on Corporate Governance Reform of Central State-Owned Enterprises ("the Plan").

The Plan aims to more clearly separate the operational management of state-owned enterprises (SOEs), some of which are currently registered under the 'Laws on Industrial Enterprises Owned by the Whole People', from government administration, by restructuring them into limited companies, and thereby increase business efficiency.

Since 1992, more than 90% of the SOEs, administered by different levels of government throughout the country, have been converted into corporations. Some economically significant SOEs, in particular those under the direct administration of the State-Owned Asset Supervision and Administration Commission of the State Council ("SASAC"), and referred to as the "central SOEs", have not yet undergone this corporate governance reform process. The Plan clarifies that, the reform shall be completed before the end of 2017, and all the central SOEs (excluding financial and cultural sector (e.g. state media) enterprises) are required to be restructured into limited companies or corporations. Per officials of SASAC, 69 of 101 central SOEs are needed to be restructured.

The Plan also clarifies policies for the following matters:

- Disposal of lands that were allocated to the central SOEs before restructuring;
- Tax incentives will be granted to central SOEs in restructuring. These will provide tax relief for, inter alia, taxable gains arising on asset restructuring, including land transfers (Details of the tax incentives are to follow);
- Corporate conversion registration procedures;
- Retention of existing SOE business licenses and qualifications post-restructuring.

According to a posting on the government website, the reform aims to facilitate the introduction of further private or foreign investment into the shareholdings of the reformed SOEs. Oil and gas companies will be at the forefront of this initiative.

Reference: SAT Announcement [2017] No. 26
Issuance date: 7 July 2017
Effective date: 7 July 2017

Relevant industries: All
Relevant companies: Enterprises with related transactions
Relevant taxes: CIT

Potential impacts on businesses:

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

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SAT clarifies filing requirements for TP reporting

On 7 July 2017, the State Administration of Taxation (SAT) issued Announcement [2017] No. 26 ("Announcement 26"). This clarifies the requirements for filling in the related-party transaction (RPT) reporting forms and country-by-country (CBC) report set out in SAT Announcement [2016] No. 42 ("Announcement 42").

SAT issued Announcement 42 in June 2016, which replaced the earlier Guo Shui Fa [2009] No. 2 and Guo Shui Fa [2008] No. 114. It rolls out to China the BEPS Action 13 transfer pricing (TP) documentation structure, consisting of the Local File and the Master File, and incorporates the BEPS CBC report as an element of the annual RPT reporting. This means that, in China ,the CBC report will be filed as part of the 22 RPT report forms. Announcement 42 requirements apply to the 2016 fiscal year and subsequent [See KPMG *China Tax Alert*: *SAT Issued Announcement on the Enhancement of the Reporting of Related Party Transactions and Administration of Contemporaneous Documentation(Issue 23, July 2016)* for more details].

Announcement 26 seeks to align Chinese practice with OECD CBC reporting requirements, which have been clarified in four separate OECD guidance documents since the conclusion of the initial BEPS work in October 2015. In April 2017, the OECD released additional guidance [See KPMG *China Tax Weekly Update (Issue 16, April 2017)* for details], clarifying how to determine the 'related party revenues' of a multinational enterprise (MNE), for a particular country, for presentation on the face of the CBC report. The OECD clarified that related party revenues, for the purpose of the CBC report, will be those revenues arising from the entities described as 'constituent entities' of the MNE in Table 2 of the CBC report. An MNE's 'constituent entities' will be determined with reference to accounting standards in the MNE's home country. This may differ from the determination of 'related parties' under the TP rules of a country, so this is an important distinction.

Announcement 26 confirms that China will follow the OECD approach on this matter. It also clarifies that resident enterprises may amend their filed RPT reporting forms for year 2016 before 31 December 2017.

Reference: SAT Announcement [2017] No. 25
Issuance date: 7 July 2017
Effective date: 24 April 2017

Relevant industries: All
Relevant companies: MNEs
Relevant taxes: CIT / IIT

Potential impacts on businesses:
- Actual tax burden reduced

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Protocol to China-Pakistan DTA comes into force

On 7 July 2017, SAT issued Announcement [2017] No. 25 ("Announcement 25") to clarify the Third Protocol to the *Agreement between the Government of the People's Republic of China and the Government of the Islamic Republic of Pakistan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income* (China-Pakistan DTA). The Third Protocol to the China-Pakistan DTA was signed on 8 December 2016 and formally entered into force on 24 April 2017 (See KPMG *China Tax Weekly Update Issue 48, December 2016*). Announcement 25 mentions that all required approval procedures from the China and Pakistan sides have been fulfilled.

According to the Third Protocol, interest, arising from loans provided by the Industrial and Commercial Bank of China (ICBC) and by the Silk Road Fund, to projects which are set out in the China-Pakistan Economic Corridor (CPEC) Energy Cooperation Agreement, shall be exempted from income tax in Pakistan.

China's tax treaty network, encompassing 106 jurisdictions (including Hong, Macau and Taiwan), already covers almost all the Belt and Road Initiative (BRI) countries. It can be foreseen that, with the deepening cooperation between China and the BRI countries, China intends to negotiate and sign tax treaties with more countries along the BRI. As a result, "going out" Chinese enterprises may further reduce their tax burdens.

In May this year, Mr. Wang Jun, Director of the SAT, made a speech at the "Belt and Road" Forum held in Beijing at which he set out details of planned China BRI tax initiatives, as well as aspirations for tax measures to be taken by fellow BRI countries, both unilaterally and through agreements with China and other BRI countries. Prior to this, SAT had issued Shui Zong Fa [2017] No. 42 setting out tax administration initiatives to better serve the BRI (See KPMG *China Tax Weekly Update* *Issue 20, May 2017* and *Issue 18, May 2017* for details).

Reference: N/A
Issuance date: 21 July 2017
Effective date: N/A

Relevant industries: All
Relevant companies: Enterprises engaged in PPP projects
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.

New regulations for Public-Private Partnership projects

On 21 July 2017, the State Council issued the draft Regulations for Public-Private Partnerships (PPP) for Infrastructure and Public Services ('the Draft") to solicit public comments. Comments may be made up to 22 August 2017.

In China, the concept of PPP is not new, having been introduced into China already in the mid-1990s. More recently, the State Council has repeatedly sought to push the use of PPP, with Guo Ban Fa [2015] No. 42 providing guidance on public service PPPs, and the March 2017 State Council legislative work identifying PPP as a priority item for 2017.

The Draft provides detailed rules for PPP initiation, implementation, supervision, dispute resolution, and legal liabilities, including:

- The Draft gives a formal definition to PPP. It clarifies that PPP can be used by government bodies if infrastructure and public services projects are of a long-term nature and are suitable for private sector involvement.

  The relevant government departments for given industries/projects are required to develop catalogues which detail the type of projects eligible for PPP.

- As many government agencies, such as the National Development and Reform Commission (NDRC), the Ministry of Finance (MOF) as well as industrial regulatory authorities, will be involved in each individual PPP project, a coordination mechanism will be set up by the State Council, to reconcile any disputes arising.

- Rules for implementation of PPP projects include:
  - A contract for a PPP project may not require the government to:

    (i) Repurchase the investment made by private sector investor;

    (ii) Bear losses arising from the private sector investment;

    (iii) Set a minimum yield for the private sector investment;

    (iv) Provide a government guarantee for the financing of the PPP project.
  - Companies set up by government and private sector investors for PPP projects (PPP project company) are not allowed to carry out other businesses that are unrelated to the PPP projects.
  - In the course of building PPP projects, equity interests in PPP project companies held by private sector investors are not allowed to be transferred. However, in the course of operating the PPP projects (i.e. post-construction), such equities can be transferred, subject to approval from the government authorities.

- The Draft also sets out measures to limit the possibility of government actions potentially detrimental to the private sector investment in the PPP projects.

It is understood that, legislative work in relation to PPP is currently underway. Prior to its release, KPMG has launched a publication which focuses on the impact of tax policies on PPP projects.

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Contact Us

For any enquiries, please send to our public mailbox: taxenquiry@kpmg.com or contact our partners/directors in each China/HK offices.

Khoonming Ho
Head of Tax,
KPMG Asia Pacific
Tel. +86 (10) 8508 7082
khoonming.ho@kpmg.com

Lewis Lu
Head of Tax,
KPMG China
Tel. +86 (21) 2212 3421
lewis.lu@kpmg.com

Beijing/Shenyang
David Ling
Tel. +86 (10) 8508 7083
david.ling@kpmg.com

Tianjin
Eric Zhou
Tel. +86 (10) 8508 7610
ec.zhou@kpmg.com

Qingdao
Vincent Pang
Tel. +86 (532) 8907 1728
vincent.pang@kpmg.com

Shanghai/Nanjing/Chengdu
Anthony Chau
Tel. +86 (21) 2212 3206
anthony.chau@kpmg.com

Hangzhou
John Wang
Tel. +86 (571) 2803 8088
john.wang@kpmg.com

Guangzhou
Lilly Li
Tel. +86 (20) 3813 8999
lilly.li@kpmg.com

Fuzhou/Xiamen
Maria Mei
Tel. +86 (592) 2150 807
maria.mei@kpmg.com

Shenzhen
Eileen Sun
Tel. +86 (755) 2547 1188
eileen.gh.sun@kpmg.com

Hong Kong
Karmen Yeung
Tel. +852 2143 8753
karmen.yeung@kpmg.com

Northern China

David Ling
Head of Tax,
Northern Region
Tel. +86 (10) 8508 7083
david.ling@kpmg.com

Cheng Chi
Tel. +86 (10) 8508 7606
cheng.chi@kpmg.com

Conrad TURLEY
Tel. +86 (10) 8508 7513
conrad.turley@kpmg.com

Milano Fang
Tel. +86 (532) 8907 1724
milano.fang@kpmg.com

Tony Feng
Tel. +86 (10) 8508 7531
tony.feng@kpmg.com

John Gu
Tel. +86 (10) 8508 7095
john.gu@kpmg.com

Rachel Guan
Tel. +86 (10) 8508 7613
rachel.guan@kpmg.com

Helen Han
Tel. +86 (10) 8508 7627
h.han@kpmg.com

Michael Wong
Tel. +86 (10) 8508 7085
michael.wong@kpmg.com

Josephine Jiang
Tel. +86 (10) 8508 7511
josephine.jiang@kpmg.com

Henry Kim
Tel. +86 (10) 8508 5000
henry.kim@kpmg.com

Li Li
Tel. +86 (10) 8508 7537
li.li@kpmg.com

Lisa Li
Tel. +86 (10) 8508 7638
lisa.h.li@kpmg.com

Thomas Li
Tel. +86 (10) 8508 7574
thomas.li@kpmg.com

Larry Li
Tel. +86 (10) 8508 7658
larry.y.li@kpmg.com

Alan O'Connor
Tel. +86 (10) 8508 7521
alan.oconnor@kpmg.com

Vincent Pang
Tel. +86 (10) 8508 7516
+86 (532) 8907 1728
vincent.pang@kpmg.com

Naoko Hirasawa
Tel. +86 (10) 8508 7054
naoko.hirasawa@kpmg.com

Shirley Shen
Tel. +86 (10) 8508 7586
yinghua.shen@kpmg.com

Joseph Tam
Tel. +86 (10) 8508 7605
laiyiu.tam@kpmg.com

Joyce Tan
Tel. +86 (10) 8508 7666
joyce.tan@kpmg.com

Jessica Xie
Tel. +86 (10) 8508 7540
jessica.xie@kpmg.com

Cynthia Xie
Tel. +86 (10) 8508 7543
cynthia.py.xie@kpmg.com

Christopher Xing
Tel. +86 (10) 8508 7072
christopher.xing@kpmg.com

Irene Yan
Tel. +86 (10) 8508 7508
irene.yan@kpmg.com

Jessie Zhang
Tel. +86 (10) 8508 7625
jessie.j.zhang@kpmg.com

Sheila Zhang
Tel. +86 (10) 8508 7507
sheila.zhang@kpmg.com

Tiansheng Zhang
Tel. +86 (10) 8508 7526
tiansheng.zhang@kpmg.com

Tracy Zhang
Tel. +86 (10) 8508 7509
tracy.h.zhang@kpmg.com

Eric Zhou
Tel. +86 (10) 8508 7610
ec.zhou@kpmg.com

Central China

Anthony Chau
Head of Tax,
Eastern & Western Region
Tel. +86 (21) 2212 3206
anthony.chau@kpmg.com

Andy Chen
Tel. +86 (21) 2212 3298
andy.m.chen@kpmg.com

Yasuhiko Otani
Tel. +86 (21) 2212 3360
yasuhiko.otani@kpmg.com

Johnny Deng
Tel. +86 (21) 2212 3457
johnny.deng@kpmg.com

Cheng Dong
Tel. +86 (21) 2212 3410
cheng.dong@kpmg.com

Marianne Dong
Tel. +86 (21) 2212 3436
marianne.dong@kpmg.com

Chris Ge
Tel. +86 (21) 2212 3083
chris.ge@kpmg.com

Chris Ho
Tel. +86 (21) 2212 3406
chris.ho@kpmg.com

Henry Wong
Tel. +86 (21) 2212 3380
henry.wong@kpmg.com

Jason Jiang
Tel. +86 (21) 2212 3527
jason.jt.jiang@kpmg.com

Flame Jin
Tel. +86 (21) 2212 3420
flame.jin@kpmg.com

Sunny Leung
Tel. +86 (21) 2212 3488
sunny.leung@kpmg.com

Michael Li
Tel. +86 (21) 2212 3463
michael.y.li@kpmg.com

Karen Lin
Tel. +86 (21) 2212 4169
karen.w.lin@kpmg.com

Christopher Mak
Tel. +86 (21) 2212 3409
christopher.mak@kpmg.com

Henry Ngai
Tel. +86 (21) 2212 3411
henry.ngai@kpmg.com

Ruqiang Pan
Tel. +86 (21) 2212 3118
ruqiang.pan@kpmg.com

Amy Rao
Tel. +86 (21) 2212 3208
amy.rao@kpmg.com

Wayne Tan
Tel. +86 (28) 8673 3915
wayne.tan@kpmg.com

Tanya Tang
Tel. +86 (25) 8691 2850
tanya.tang@kpmg.com

Rachel Tao
Tel. +86 (21) 2212 3473
rachel.tao@kpmg.com

Janet Wang
Tel. +86 (21) 2212 3302
janet.z.wang@kpmg.com

John Wang
Tel. +86 (571) 2803 8088
john.wang@kpmg.com

Mimi Wang
Tel. +86 (21) 2212 3250
mimi.wang@kpmg.com

Jennifer Weng
Tel. +86 (21) 2212 3431
jennifer.weng@kpmg.com

Grace Xie
Tel. +86 (21) 2212 3422
grace.xie@kpmg.com

Bruce Xu
Tel. +86 (21) 2212 3396
bruce.xu@kpmg.com

Jie Xu
Tel. +86 (21) 2212 3678
jie.xu@kpmg.com

Robert Xu
Tel. +86 (21) 2212 3124
robert.xu@kpmg.com

Yang Yang
Tel. +86 (21) 2212 3372
yang.yang@kpmg.com

William Zhang
Tel. +86 (21) 2212 3415
william.zhang@kpmg.com

Hanson Zhou
Tel. +86 (21) 2212 3318
hanson.zhou@kpmg.com

Michelle Zhou
Tel. +86 (21) 2212 3458
michelle.b.zhou@kpmg.com

Southern China

Lilly Li
Head of Tax,
Southern Region
Tel. +86 (20) 3813 8999
lilly.li@kpmg.com

Penny Chen
Tel. +1 (408) 367 6086
penny.chen@kpmg.com

Vivian Chen
Tel. +86 (755) 2547 1198
vivian.w.chen@kpmg.com

Sam Fan
Tel. +86 (755) 2547 1071
sam.kh.fan@kpmg.com

Joe Fu
Tel. +86 (755) 2547 1138
joe.fu@kpmg.com

Ricky Gu
Tel. +86 (20) 3813 8620
ricky.gu@kpmg.com

Fiona He
Tel. +86 (20) 3813 8623
fiona.he@kpmg.com

Angie Ho
Tel. +86 (755) 2547 1276
angie.ho@kpmg.com

Aileen Jiang
Tel. +86 (755) 2547 1163
aileen.jiang@kpmg.com

Cloris Li
Tel. +86 (20) 3813 8829
cloris.li@kpmg.com

Jean Li
Tel. +86 (755) 2547 1128
jean.j.li@kpmg.com

Sisi Li
Tel. +86 (20) 3813 8887
sisi.li@kpmg.com

Mabel Li
Tel. +86 (755) 2547 1164
mabel.li@kpmg.com

Kelly Liao
Tel. +86 (20) 3813 8668
kelly.liao@kpmg.com

Patrick Lu
Tel. +86 (755) 2547 1187
patrick.c.lu@kpmg.com

Grace Luo
Tel. +86 (20) 3813 8609
grace.luo@kpmg.com

Ling Lin
Tel. +86 (755) 2547 1170
ling.lin@kpmg.com

Maria Mei
Tel. +86 (592) 2150 807
maria.mei@kpmg.com

Eileen Sun
Tel. +86 (755) 2547 1188
eileen.gh.sun@kpmg.com

Michelle Sun
Tel. +86 (20) 3813 8615
michelle.sun@kpmg.com

Bin Yang
Tel. +86 (20) 3813 8605
bin.yang@kpmg.com

Lixin Zeng
Tel. +86 (20) 3813 8812
lixin.zeng@kpmg.com

Hong Kong

Curtis Ng
Head of Tax, Hong Kong
Tel. +852 2143 8709
curtis.ng@kpmg.com

Ayesha M. Lau
Tel. +852 2826 7165
ayesha.lau@kpmg.com

Chris Abbiss
Tel. +852 2826 7226
chris.abbiss@kpmg.com

Darren Bowdern
Tel. +852 2826 7166
darren.bowdern@kpmg.com

Yvette Chan
Tel. +852 2847 5108
yvette.chan@kpmg.com

Lu Chen
Tel. +852 2143 8777
lu.l.chen@kpmg.com

Rebecca Chin
Tel. +852 2978 8987
rebecca.chin@kpmg.com

Wade Wagatsuma
Tel. +852 2685 7806
wade.wagatsuma@kpmg.com

Natalie To
Tel. +852 2143 8509
natalie.to@kpmg.com

Matthew Fenwick
Tel. +852 2143 8761
matthew.fenwick@kpmg.com

Sandy Fung
Tel. +852 2143 8821
sandy.fung@kpmg.com

Charles Kinsley
Tel. +852 2826 8070
charles.kinsley@kpmg.com

Stanley Ho
Tel. +852 2826 7296
stanley.ho@kpmg.com

Becky Wong
Tel. +852 2978 8271
becky.wong@kpmg.com

Barbara Forrest
Tel. +852 2978 8941
barbara.forrest@kpmg.com

John Kondos
Tel. +852 2685 7457
john.kondos@kpmg.com

Kate Lai
Tel. +852 2978 8942
kate.lai@kpmg.com

Travis Lee
Tel. +852 2143 8524
travis.lee@kpmg.com

Irene Lee
Tel. +852 2685 7372
irene.lee@kpmg.com

Alice Leung
Tel. +852 2143 8711
alice.leung@kpmg.com

Ivor Morris
Tel. +852 2847 5092
ivor.morris@kpmg.com

Benjamin Pong
Tel. +852 2143 8525
benjamin.pong@kpmg.com

Malcolm Prebble
Tel. +852 2684 7472
malcolm.j.prebble@kpmg.com

David Siew
Tel. +852 2143 8785
david.siew@kpmg.com

Murray Sarelius
Tel. +852 3927 5671
murray.sarelius@kpmg.com

John Timpany
Tel. +852 2143 8790
john.timpany@kpmg.com

Lachlan Wolfers
Tel. +852 2685 7791
lachlan.wolfers@kpmg.com

Steve Man
Tel. +852 2978 8976
steve.man@kpmg.com

Daniel Hui
Tel. +852 2685 7815
daniel.hui@kpmg.com

Karmen Yeung
Tel. +852 2143 8753
karmen.yeung@kpmg.com

Erica Chan
Tel. +852 3927 5572
erica.chan@kpmg.com

Adam Zhong
Tel. +852 2685 7559
adam.zhong@kpmg.com

kpmg.com/cn