



# China Tax Weekly Update

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

Potential impacts on businesses:

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

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

## OECD developing country tax toolkit- offshore transfers

According to news posted on the OECD website on 1 August 2017, the Platform for Collaboration on Tax – a joint initiative of the IMF, OECD, UN and World Bank Group – has developed a draft toolkit designed to help developing countries tackle the complexities of taxing offshore indirect transfers (OITs) of assets. The Platform partners seek comments by 25 September 2017.

The toolkit focuses on OITs of immovable assets, seen to be a major issue for developing countries. These involve the establishment of a chain of overseas companies above the immovable-owning company – exit from the investment is via the sale of one of the offshore companies, the disposal gains from which would fall outside the normal source taxing jurisdiction of the country in which the immovable are located.

It is recognised that the OECD/G20 BEPS work did not cover OITs and the draft toolkit aims to assist developing countries design effective rules. The toolkit:

- Examines principles to guide the taxation of these transactions in the countries where the underlying assets are located.
- Focuses on extractive (and other) industries in developing countries.
- Considers the current standards in the OECD and the UN model tax conventions, and the new multilateral convention (MLI).
- Discusses economic considerations that may guide policy in this area, the types of assets that could appropriately attract tax when transferred indirectly offshore, implementation challenges that countries face, and options that could be used to enforce such a tax.

The draft toolkit outlines two main approaches for enforcing of taxation of OITs by the country in which the asset is located.

- Model 1 treats such an OIT as a deemed disposal of the underlying asset. This Model seeks to tax the local entity that directly owns the asset in question, by treating that entity as disposing of, and reacquiring, its assets for their market value where a change of control occurs (e.g. because of an offshore sale of shares or comparable interests). This Model 1 is favored in this report for reasons of enforcement and basis adjustment logic and simplicity.

- Model 2 treats the transfer as being made by the actual seller, offshore, but sources the gain on that transfer within the location country and so enables that the country to tax it. This model seeks to tax the non-resident seller of the relevant shares or comparable interests via a non-resident assessing rule. This Model 2—although more commonly adopted by countries seeking to tax OITs (such as China)—can give rise to greater enforcement challenges and has more complex design options than Model 1.

China's State Administration of Taxation (SAT) has guidance in place to regulate offshore indirect transfer of assets, which follows the Model 2 approach:

- SAT Announcement [2015] No. 7 ("Announcement 7") was issued in February 2015. It replaced the original indirect offshore equity disposal reporting and taxation rules in Guo Shui Han [2009] No. 698 ('Circular 698'), promulgated in 2009, with a substantially new and more comprehensive approach. It links the determination of targeted transactions to the General Anti-tax Avoidance Rules (GAAR), the guidance for which sets out detailed procedures for case establishment and adjudication. Announcement 7 has had a major impact on merger and acquisition (M&A) transactions and corporate restructurings undertaken by multinational enterprises involving China enterprises and assets (See KPMG [China Tax Alert Issue 3, February 2015](#) for more details).
- Shui Zong Han [2015] No. 68 was issued in May 2015, which providing guidance for the Chinese tax authorities' administration and implementation of the indirect offshore disposal rules in Announcement 7. It ensures that Announcement 7 cases are governed by the procedural rules and framework set out under the GAAR (See KPMG [China Tax Alert Issue 13, May 2015](#) for more details).



Reference: SAT  
Announcement [2017] No. 29  
Issuance date: 28 July 2017  
Effective date: 28 July 2017

Relevant industries: All  
Relevant companies:  
Overseas and domestic  
enterprises trade futures  
through INE  
Relevant taxes: VAT

Potential impacts on  
businesses:

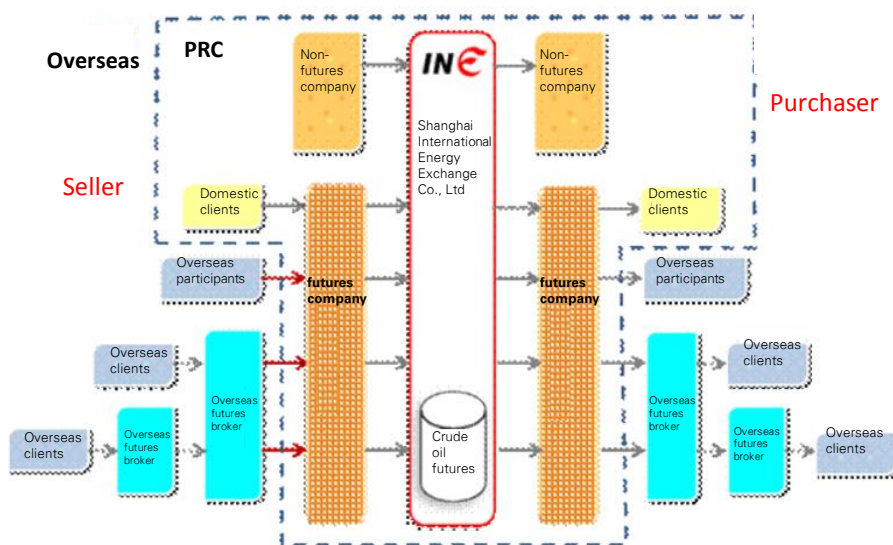
- Compliance risks due to regulatory uncertainties reduced

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

## VAT exemption for bonded futures delivery

In 2015, the Ministry of Finance (MOF) and SAT issued circular Cai Shui [2015] No. 35 ['Circular 35']. This granted a VAT exemption for the bonded delivery of crude oil futures, transacted for through the Shanghai International Energy Exchange ("INE"). The bonded delivery must occur within a Customs Special Supervision Area or at a bonded supervision premises. These are nationally designated special zones.

The process of bonded delivery transaction of crude oil futures is as below:



Building on Circular 35, on 28 July 2017 the SAT issued Announcement [2017] No. 29 ("Announcement 29"), to clarify the administration of the VAT exemption. Announcement 29, effective from date of issuance, states:

- Domestic enterprise members of INE as well as other domestic enterprises who transact for bonded delivery via members of INE, must be registered as VAT taxpayers. A VAT exemption recordal, with supporting materials, must be made with the domestic enterprise's in-charge tax authority with the initial VAT exemption application for bonded delivery of crude oil futures.
- Where a domestic enterprise sells futures for bonded delivery of crude oil, a VAT ordinary invoice must be issued to the purchaser.
- Where an overseas enterprise (overseas futures broker or overseas INE non-member transaction participant) is the seller, the domestic futures company (member of INE) should obtain receipts from the overseas seller to sustain the VAT-exempt treatment of the transaction.

Reference: N/A  
Issuance date: 7 August 2017

Effective date: N/A

Relevant industries: All  
Relevant companies: All  
Relevant taxes: Vehicle Purchase Tax

Potential impacts on businesses:

- Compliance risks due to regulatory uncertainties reduced

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

## Vehicle purchase tax to be put on statutory basis

On 7 August 2017, MOF and SAT jointly released the [draft Vehicle Purchase Tax \(VPT\) Law](#) ("the *Draft*") to solicit public comments (by 6 September 2017). Placing existing Chinese taxes on a statutory basis is part of a wider Chinese government effort to reinforce the 'rule of law'. Taxes such as arable land occupation tax and VAT are also undergoing a similar transition.

VPT is currently based on 2001 State Council-issued [rules](#) and these will be replaced by statutory law issued by the National People's Congress (NPC). Under the current rules, VPT is levied, at 10% of taxable price, on the acquisition of a taxable vehicle for personal use through purchase, import, self-manufacture, gift, prize-winning or any other method. In addition to the VPT, vehicles in China are also subject to vehicle and vessel tax (VVT), which has been put on statutory basis since 2012. At the stage of import and sales of vehicles, taxes such as customs duty, VAT, consumption tax, and stamp duty may also be triggered.

The framework of the existing VPT, and the VPT tax burden, will remain basically unchanged. However, in the *Draft*, there are still some notable adjustments:

- Under the *Draft*, the VPT taxable items consist of automobiles, motorcycles, trailers and trams. Previously separate items of agricultural vehicles and trolleybuses are now consolidated under automobiles.
- Under the existing VPT rules, a special provision applies where the taxable price declared by a taxpayer for a taxable vehicle purchased or imported for own use is lower than the minimum taxable price for taxable vehicles of the same type. Where there is no justification provided for the difference then, under current rules, VPT will be levied based on the minimum taxable price. This rule has been eliminated in the *Draft*.
- As mechanisms are now in place for the sharing of digital records on tax payment between the tax authorities and vehicle administration agencies, provisions relating to providing hard copies of tax payment certificates for vehicle registration formalities, are eliminated under the *Draft*. Instead, before the registration, the digital records of the tax payment will be verified by the vehicle administration agencies.
- Under the *Draft*, enterprises engaged in manufacturing and sale of vehicles, must provide production and sales information to the tax authorities. This is a new requirement in the *Draft*.



Reference: N/A  
 Issuance date: N/A  
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Relevant industries: Financial  
 Industry  
 Relevant companies: Non-  
 financial enterprises engaged  
 in provision of online  
 payment services  
 Relevant taxes: N/A

Potential impacts on  
 businesses:

- Risks of being challenged  
 due to non compliance  
 issues increased

## China tightens regulation of online payment services

Recent business media reports have observed that the People's Bank of China (PBOC) on 4 August 2017 issued a requiring non-financial institutions providing online payment services (referred to as "third-party online payment service providers") to operate through a centralised clearing house\*, starting from 30 June 2018.

Currently, third-party online payment service providers, such as Alipay (under Alibaba Group) and Tenpay (under Tencent Group), maintain separate bilateral relationships with commercial banks to facilitate payments to or from users' bank accounts. Under this model, banks cannot obtain payment details, such as the merchant's name and location. It is consequently difficult for the PBOC to carry out anti-money laundering and financial regulation supervisory activities. The 4 August PBOC notice now requires all third-party online payment service providers to connect to a 2016-established national clearing house before 15 October 2017 and to clear all payments through it from 30 June 2018. This will facilitate PBOC oversight.

\* The clearing house was built upon a 2016 circular which was jointly issued by PBOC and other 13 government agencies including, inter alia, the National Development and Reform Commission (NDRC), MOF, and the State Administration for Industry and Commerce (SAIC). The circular provided that non-banking payment institutions must clear inter-bank payments through the PBOC clearing system or authorized clearing institutions. The clearing house enables all payments to be conducted in a transparent and centralised way.



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