

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:

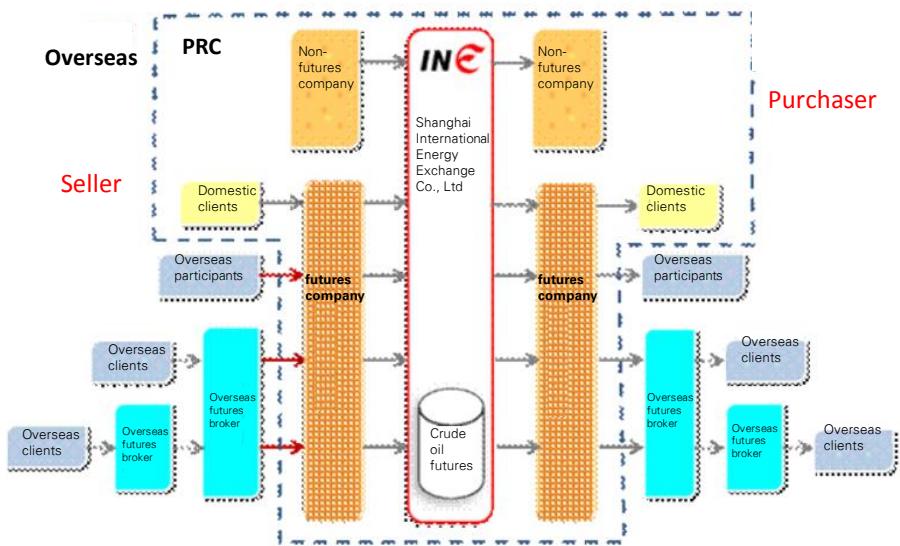
- Compliance risks due to regulatory uncertainties reduced

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
 Effective date: N/A

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 notice 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.



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	Northern China	Christopher Xing Tel. +86 (10) 8508 7072 christopher.xing@kpmg.com	Amy Rao Tel. +86 (21) 2212 3208 amy.rao@kpmg.com	Cloris Li Tel. +86 (20) 3813 8829 cloris.li@kpmg.com	Stanley Ho Tel. +852 2826 7296 stanley.ho@kpmg.com
Lewis Lu Head of Tax, KPMG China Tel. +86 (21) 2212 3421 lewis.lu@kpmg.com	David Ling Head of Tax, Northern Region Tel. +86 (10) 8508 7083 david.ling@kpmg.com	Irene Yan Tel. +86 (10) 8508 7508 irene.yan@kpmg.com	Wayne Tan Tel. +86 (28) 8673 3915 wayne.tan@kpmg.com	Jean Li Tel. +86 (755) 2547 1128 jean.j.li@kpmg.com	Becky Wong Tel. +852 2978 8271 becky.wong@kpmg.com
Beijing/Shenyang David Ling Tel. +86 (10) 8508 7083 david.ling@kpmg.com	Conrad TURLEY Tel. +86 (10) 8508 7513 conrad.turley@kpmg.com	Sheila Zhang Tel. +86 (10) 8508 7507 sheila.zhang@kpmg.com	Rachel Tao Tel. +86 (21) 2212 3473 rachel.tao@kpmg.com	Mabel Li Tel. +86 (755) 2547 1164 mabel.li@kpmg.com	John Kondos Tel. +852 2685 7457 john.kondos@kpmg.com
Tianjin Eric Zhou Tel. +86 (10) 8508 7610 ec.zhou@kpmg.com	Milano Fang Tel. +86 (532) 8907 1724 milano.fang@kpmg.com	Tiansheng Zhang Tel. +86 (10) 8508 7526 tiansheng.zhang@kpmg.com	Janet Wang Tel. +86 (21) 2212 3302 janet.z.wang@kpmg.com	Kelly Liao Tel. +86 (20) 3813 8668 kelly.liao@kpmg.com	Kate Lai Tel. +852 2978 8942 kate.lai@kpmg.com
Qingdao Vincent Pang Tel. +86 (532) 8907 1728 vincent.pang@kpmg.com	Tony Feng Tel. +86 (10) 8508 7531 tony.feng@kpmg.com	Tracy Zhang Tel. +86 (10) 8508 7509 tracy.h.zhang@kpmg.com	John Wang Tel. +86 (571) 2803 8088 john.wang@kpmg.com	Patrick Lu Tel. +86 (755) 2547 1187 patrick.c.lu@kpmg.com	Travis Lee Tel. +852 2143 8524 travis.lee@kpmg.com
Shanghai/Nanjing/Chengdu Anthony Chau Tel. +86 (21) 2212 3206 anthony.chau@kpmg.com	Rachel Guan Tel. +86 (10) 8508 7613 rachel.guan@kpmg.com	Central China	Mimi Wang Tel. +86 (21) 2212 3250 mimi.wang@kpmg.com	Grace Luo Tel. +86 (20) 3813 8609 grace.luo@kpmg.com	Irene Lee Tel. +852 2685 7372 irene.lee@kpmg.com
Hangzhou John Wang Tel. +86 (571) 2803 8088 john.wang@kpmg.com	Helen Han Tel. +86 (10) 8508 7627 h.anh@kpmg.com	Michael Wong Tel. +86 (10) 8508 7085 michael.wong@kpmg.com	Andy Chen Tel. +86 (21) 2212 3298 andy.m.chen@kpmg.com	Bruce Xu Tel. +86 (21) 2212 3396 bruce.xu@kpmg.com	Ling Lin Tel. +86 (755) 2547 1170 ling.lin@kpmg.com
Guangzhou Lilly Li Tel. +86 (20) 3813 8999 lilly.li@kpmg.com	Josephine Jiang Tel. +86 (10) 8508 7511 josephine.jiang@kpmg.com	Yasuhiro Otani Tel. +86 (21) 2212 3360 yasuhiro.o.tani@kpmg.com	Jie Xu Tel. +86 (21) 2212 3678 jie.xu@kpmg.com	Maria Mei Tel. +86 (592) 2150 807 maria.mei@kpmg.com	Ivor Morris Tel. +852 2847 5092 ivor.morris@kpmg.com
Fuzhou/Xiamen Maria Mei Tel. +86 (592) 2150 807 maria.mei@kpmg.com	Henry Kim Tel. +86 (10) 8508 5000 henry.kim@kpmg.com	Cheng Dong Tel. +86 (21) 2212 3410 cheng.dong@kpmg.com	Yang Yang Tel. +86 (21) 2212 3372 yang.yang@kpmg.com	Eileen Sun Tel. +86 (755) 2547 1188 eileen.gh.sun@kpmg.com	Benjamin Pong Tel. +852 2143 8525 benjamin.pong@kpmg.com
Shenzhen Eileen Sun Tel. +86 (755) 2547 1188 eileen.gh.sun@kpmg.com	Li Li Tel. +86 (10) 8508 7537 li.li@kpmg.com	Marianne Dong Tel. +86 (21) 2212 3436 marianne.dong@kpmg.com	William Zhang Tel. +86 (21) 2212 3415 william.zhang@kpmg.com	Michelle Sun Tel. +86 (20) 3813 8615 michelle.sun@kpmg.com	Malcolm Prebble Tel. +852 2684 7472 malcolm.j.prebble@kpmg.com
Hong Kong Karmen Yeung Tel. +852 2143 8753 karmen.yeung@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	Chris Ge Tel. +86 (21) 2212 3083 chris.ge@kpmg.com	Bin Yang Tel. +86 (20) 3813 8605 bin.yang@kpmg.com	David Siew Tel. +852 2143 8785 david.siew@kpmg.com
	Larry Li Tel. +86 (10) 8508 7658 larry.y.li@kpmg.com	Chris Ho Tel. +86 (21) 2212 3406 chris.ho@kpmg.com	Henry Wong Tel. +86 (21) 2212 3380 henry.wong@kpmg.com	Lixin Zeng Tel. +86 (20) 3813 8812 lixin.zeng@kpmg.com	Murray Sarelius Tel. +852 3927 5671 murray.sarelius@kpmg.com
	Alan O'Connor Tel. +86 (10) 8508 7521 alan.oconnor@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	John Timpany Tel. +852 2143 8790 john.timpany@kpmg.com	John Timpany Tel. +852 2143 8790 john.timpany@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	Sam Fan Tel. +86 (21) 2212 3463 michael.y.li@kpmg.com	Curtis Ng Head of Tax, Hong Kong Tel. +852 2143 8709 curtis.ng@kpmg.com	Lachlan Wolfers Tel. +852 2685 7791 lachlan.wolfers@kpmg.com
	Shirley Shen Tel. +86 (10) 8508 7586 yinghua.shen@kpmg.com	Joseph Tam Tel. +86 (10) 8508 7605 laiyiu.tam@kpmg.com	Joe Fu Tel. +86 (755) 2547 1138 joe.fu@kpmg.com	Ayesha M. Lau Tel. +852 2826 7165 ayesha.lau@kpmg.com	Steve Man Tel. +852 2978 8976 steve.man@kpmg.com
	Joyce Tan Tel. +86 (10) 8508 7666 joyce.tan@kpmg.com	Michael Li Tel. +86 (21) 2212 4169 karen.w.lin@kpmg.com	Christopher Mak Tel. +86 (21) 2212 3409 christopher.mak@kpmg.com	Chris Abbiss Tel. +852 2826 7226 chris.abbiss@kpmg.com	Daniel Hui Tel. +852 2685 7815 daniel.hui@kpmg.com
	Jessica Xie Tel. +86 (10) 8508 7540 jessica.xie@kpmg.com	Karen Lin Tel. +86 (21) 2212 4169 karen.w.lin@kpmg.com	Henry Ngai Tel. +86 (21) 2212 3411 henry.ngai@kpmg.com	Ricky Gu Tel. +86 (20) 3813 8620 ricky.gu@kpmg.com	Karmen Yeung Tel. +852 2685 7853 karmen.yeung@kpmg.com
	Cynthia Xie Tel. +86 (10) 8508 7543 cynthia.py.xie@kpmg.com	Ruqiang Pan Tel. +86 (21) 2212 3118 ruqiang.pan@kpmg.com	Fiona He Tel. +86 (20) 3813 8623 fiona.he@kpmg.com	Natalie To Tel. +852 2143 8509 natalie.to@kpmg.com	Erica Chan Tel. +852 3927 5572 erica.chan@kpmg.com
			Angie Ho Tel. +86 (755) 2547 1276 angie.ho@kpmg.com	Matthew Fenwick Tel. +852 2143 8761 matthew.fenwick@kpmg.com	Adam Zhong Tel. +852 2685 7559 adam.zhong@kpmg.com
			Aileen Jiang Tel. +86 (755) 2547 1163 aileen.jiang@kpmg.com	Sandy Fung Tel. +852 2143 8821 sandy.fung@kpmg.com	Charles Kinsley Tel. +852 2826 8070 charles.kinsley@kpmg.com
				Charles Kinsley Tel. +852 2826 8070 charles.kinsley@kpmg.com	Aileen Jiang Tel. +86 (755) 2547 1163 aileen.jiang@kpmg.com