



China Tax Weekly Update

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Reference: State Council
Decree No. 691
Issuance date: 19 November
2017
Effective date: 1 December
2017

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

Potential impacts on
businesses:

- Compliance risks due to regulatory uncertainties reduced.

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Business tax finally abolished following VAT reform

Since 2012, the Chinese Business Tax (BT) tax regime, which formerly applied to most service provision and other supplies made in China, has been transitioning to Value Added Tax (VAT) (i.e., "VAT reform"). BT has now been fully replaced by the expanded VAT regime.

From 1 May 2016, VAT expanded to cover the construction and real estate services, financial services and lifestyle services. On 19 November 2017, the State Council issued a decree No. 691 abolishing the *Provisional Regulation for BT* and amending the *Provisional Regulations for VAT*. The decree No. 691 comes into force on its promulgation date.

There are no new policies set out in the revised VAT provisional regulation and the current transitional rules for the VAT reform will still be applied. Officials from the State Council, Ministry of Finance (MOF) and State Administration of Taxation (SAT) indicated that, the relevant government authorities will improve the VAT policies and continue to draft the VAT law, which will ultimately put VAT on a statutory basis in China.

Reference: SAT
Announcement [2017] No. 43
Issuance date: 26 November
2017
Effective date: 1 January
2018

Relevant industries:
Construction sector
Relevant companies:
Construction enterprises
Relevant taxes: VAT

Potential impacts on
businesses:

- Tax compliance costs
reduced

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VAT filings simplified for construction services

On 14 September 2017, the SAT issued Shui Zong Fa [2017] No.101 ("Circular 101") setting out 30 measures to further simplify Chinese tax administration procedures.

One of the measures is to simplify the recordal filing procedures for construction services subject to the simplified VAT method* (see KPMG [China Tax Weekly Update \(Issue 38, September 2017\)](#) for other measures in this space).

The SAT issued Announcement [2017] No. 43 ("Announcement 43") on 26 November 2017 to further clarify the following requirements:

- A simplified 'one-off' recordal filing now applies to a general VAT taxpayer whose provision of construction services is subject to the simplified VAT method (including where this is on an elective basis). This means that, where a taxpayer completes the recordal filing with its in-charge tax authority (where the taxpayer is located) prior to its first simplified VAT filing, then a recordal filing would not be required for further supplies of other types of (simplified VAT method-covered) construction services by the same enterprise. This requirement also applies to supplies of construction service made outside the registered tax district of the taxpayer (i.e. the recordal filing need only be filed with the in-charge tax authority where the taxpayer is located).
- General VAT taxpayers must keep copies of construction permits / contracts for recordal filing procedures, and to supply in case of audit.

* Pursuant to Appendix II of Caishui [2016] No. 36, where a general VAT provides a construction service, the construction service may be subject to the 3% simplified calculation method (no input VAT credit will be applied) if it falls within the following situations:

- Construction service for an existing construction project which either: (i) has a construction permit in place on or before 30 April 2016; or (ii) if there is no construction permit, then a construction contract with a start date on or before 30 April 2016;
- Construction services where the construction company only provides labour services;
- Construction services where the principal provides equipment and materials (this covers the case of a subcontractor working for a principal).

Another Circular Cai Shui [2017] No. 58 provides that, where a general contractor constructs the foundation and main structure of a residential building, and where the general contractor purchases all (or part of) the steel, concrete, masonry materials and prefabricated parts itself, the general contractor may also be subject to the VAT simplified calculation method (not on an elective basis).

** In September 2017, SAT, the Ministry of Housing and Urban-Rural Development (MOHURD) and MOF had jointly issued Shui Zong Fa [2017] No. 99, which sets out guidelines for the construction sector that transitioned from BT to VAT. This aims to address issues arising in the construction sector, e.g., difficulties in obtaining invoices for claiming input VAT credit, applying simplified VAT method, or prepayment of tax for cross-region construction (See KPMG [China Tax Weekly Update \(Issue 40, October 2017\)](#) for details).

You may access the following KPMG publications for VAT policies for construction sector and their impacts:

- [China Tax Alert: China's new VAT rates & rules – Real Estate & Construction industry impacts \(Issue 12, March 2016\)](#)

Reference: N/A
 Issuance date: 5 December 2017
 Effective date: N/A

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

Potential impacts on businesses:

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

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EU lists non-cooperative tax jurisdictions

On 5 December 2017, the European Union (EU) released the first ever list of non-cooperative tax jurisdictions (i.e. the blacklist). In total, 17 countries failed to meet the agreed tax good governance standards. In addition, 47 countries have committed to addressing deficiencies in their tax systems and to meet the required criteria, following contact with the EU.

The idea of an EU list was originally conceived by the European Commission and subsequently taken forward by Member States. Compilation of the list has prompted active engagement from many of the EU's international partners.

Special consideration has been given to developing countries. To avoid being blacklisted, the 47 countries committed to improving their transparency standards should meet EU criteria by the end of 2018, or 2019 for developing countries without financial centres. The European Commission also expects Member States to continue towards strong and dissuasive countermeasures for listed jurisdictions.

The 17 listed non-cooperative tax jurisdictions includes, inter alia, Macao SAR, Korea (Republic of), UAE, and Barbados. Hong Kong and Taiwan fall into the jurisdictions being invited to effectively address the deficiencies. A first interim progress report should be published by mid 2018. The EU list will be updated at least once a year.

Reference: N/A
 Issuance date: 4 December 2017
 Effective date: N/A

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

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OECD peer review on tax ruling exchanges

As part of continuing efforts to improve tax transparency and the international tax framework, the OECD has released the first analysis of individual countries' progress in [spontaneously exchanging information on tax rulings](#) in accordance with Action 5 of the BEPS package of measures released in October 2015.

The first annual report on the exchange of information on rulings evaluates how 44 countries, including all OECD members and all G20 countries, are implementing one of the four new minimum standards agreed in the OECD/G20 BEPS Project.

A key aim of the project was to increase transparency, which resulted in a new minimum standard to ensure that information on certain tax rulings is exchanged between relevant tax administrations in a timely manner (Action 5). This minimum standard requires tax administrations to spontaneously exchange information on rulings that have been granted to a foreign related party of their resident taxpayer or a permanent establishment which, in the absence of exchange, could give rise to BEPS concerns. As a minimum standard, all members of the [Inclusive Framework on BEPS](#) have committed to implement this standard, and to have their compliance with the standard reviewed and monitored by their peers.

The standard covers rulings such as advance pricing agreements (APAs), permanent establishment rulings, related party conduit rulings, and rulings on preferential regimes. More than 10,000 relevant rulings were identified up to the end of 2016.

The next annual peer review will cover all members of the Inclusive Framework except for the developing countries that requested a deferral of their review to 2019.

* In February 2017, the OECD had released documents setting standards and processes for peer review of the adoption of the BEPS minimum standards applicable under BEPS Action 13 on country-by-country reporting (CBCR) and BEPS Action 5 on the compulsory spontaneous exchange of information on tax rulings. See the following KPMG publication for more details:

□ [China Tax Weekly Update \(Issue 5, February 2017\)](#)

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

Relevant industries:
 Industries related to ocean engineering
 Relevant companies:
 Enterprises engaging in ocean engineering
 Relevant taxes: EPT for ocean engineering

Potential impacts on businesses:

- Compliance risks due to regulatory uncertainties reduced

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Environmental protection tax for offshore energy sector

On 25 December 2016, the Environmental Protection Tax (EPT) Law was approved by the Standing Committee of the 12th National People's Congress, and will be effective from 1 January 2018. It is intended that the conversion from pollutant discharge fee to tax should not raise enterprise fiscal burdens.

The law adopts the current standards for pollutant discharge fees as a lower range. Provincial level governments now have the authority to raise tax above this level based on the environmental situation in their jurisdictions [See KPMG [China Tax Weekly Update \(Issue 1, January 2017\)](#) for details].

To facilitate the implementation of the law in the specific case of the offshore energy industry, SAT and the State Oceanic Administration (SOA) recently issued the draft *Measures for Filing and Collection of EPT for Marine Engineering* to solicit public comments before 30 November 2017. The draft measures, in particular, clarify the following:

- The draft measures apply to enterprises, public institutions and other producers and business operators engaging in offshore petroleum/natural gas exploitation within China's inland waters, territorial sea, contiguous zones, exclusive economic zones, continental shelves and other sea waters, and discharging taxable pollutants into the ocean environment.
- The taxable pollutants include airborne pollutants, water pollutants and solid wastes, and EPT will be levied based on different calculation methods.
- EPT for marine engineering shall be calculated on a monthly basis and be filed on a quarterly basis. EPT can be filed and paid once a discharge of taxable pollutants occurs where it is impossible to calculate and pay EPT at regular intervals.
- EPT for marine engineering shall be paid to taxpayer's in-charge offshore petroleum tax administration sub-bureau where the taxpayer is located. Where a taxpayer falls under administration by two offshore petroleum tax administration sub-bureaus, SAT will determine which sub-bureau to take on the EPT collection role for the taxpayer.
- A mechanism for tax-related information sharing and collaboration shall be set up between government authorities in charge of ocean administration and tax authorities.

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