

# China Tax Weekly Update

ISSUE 8 | March 2018

Reference: Guo Han [2018] No. 12

Issuance date: 11 February 2018

Effective date: 31 January 2018 to 31 December 2018

Relevant industries: All

Relevant companies:

Enterprises located in Shanghai Pudong New Area

Relevant taxes: N/A

Potential impacts on businesses:

- Operational costs reduced

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## "Certificate-license separation" pilot reform advances

A "certificate-license separation" pilot program was initially launched in Shanghai Pudong New Area ("SPNA") under [Guo Han \[2015\] No. 222](#) ("Circular 222") in 2015. The pilot program simplifies administrative licensing requirements for businesses (e.g. permits to operate ports) and is scheduled to end on 22 December 2018. The reform measures affect 116 items as follows:

- For 10 activities previously covered by administrative licences, the prior pre-approvals have been abolished, and no recordal filing is required (e.g. outdoor advertising installations).
- For 6 items, the prior pre-approvals have changed to simple recordal filings (e.g. processing trade contracts).
- 110 administrative license pre-approvals remain, but with procedural simplifications.

In September 2017, the State Council committed to expand the pilot reform to further locations in China, namely to 10 free trade zones (FTZs). The same 116 items are liberalized in the same manner across the 10 FTZs located in Tianjin, Liaoning, Zhejiang, Fujian, Henan, Hubei, Guangdong, Chongqing, Sichuan and Shaanxi. These reform measures may also be implemented in the national innovation demonstration zones and high and new technology industrial development zones, subject to approval by provincial-level governments (see KPMG [China Tax Weekly Update \(Issue 36, September 2017\)](#) for details).

On 11 February 2018, the State Council issued [Guo Han \[2018\] No. 12](#) ("Circular 12") which launched another pilot program advancing the "certificate-licensing separation" reform. Circular 12 liberalizes the administrative licensing requirements for an additional 47 items. The new program will be piloted in SPNA from 31 January 2018 to 31 December 2018. As the first pilot program will expire on 22 December 2018, there will now be two pilot programs existing in parallel (i.e. the Circular 222 program covering 116 items and the Circular 12 program covering 47 items).

Circular 12 covers 10 areas, including medical, investment and transportation. The scope of the pilot reform in the other 10 FTZs is initially unaffected. The new program alters the 47 licensing items as follows:

<b>Abolish pre-approval requirements</b>	<p>Up to now, for the following businesses, there has been a requirement to obtain pre-approval in order to secure an administrative license. However, Circular 12 either replaces the pre-approval with a simple recordal filing, or abolishes the pre-approval requirement with no new administrative formalities. This affects the following three items:</p> <ul style="list-style-type: none"> <li>• Licenses for private medical institutions to make large medical equipment (class B) purchases are now subject to recordal filings, in place of pre-approvals.</li> <li>• For metrology (i.e. measurement) calibration laboratories, there is no longer a requirement pre-approval for recognition, and no recordal filings are introduced.</li> <li>• For licenses to produce important industrial products (such as dairy products, edible oils, etc.) the prior pre-approvals are altered. Specifically, (i) the annual review for licensed enterprises is abolished; (ii) abolition of licensing requirements for 5 industrial products (such as rope wire) is under consideration; and (iii) for other products, the approval procedures are simplified. This is clarified in the “simplifying the handling process” section below.</li> </ul>
<b>Simplifying approval procedures</b>	<p>Pre-approvals for 16 administrative licenses are changed to an “informing and pledging” method (the “IAP method”). Per the 2015 Circular 222, the IAP method is relevant for licensing items in respect of which pre-approvals cannot be abolished for the time being. Three of these 16 items are also impacted by the changes outlined in the “simplifying the handling process” section below.</p> <p>Under the IAP method, the simplified approval procedures are as follows: (i) the administration agency will advise the applicant of all the information required to obtain an administrative license; (ii) the applicant then submits a written confirmation confirming that it would meet all the requirements; and (iii) upon receipt of the written confirmation, the administration agency will approve the application.</p> <p>The following administrative licenses shall be subject to the IAP method as follows:</p> <ul style="list-style-type: none"> <li>• License for enterprise engaging in supervision of construction projects (grade B)</li> <li>• License for enterprise engaging in supervision of construction projects (grade C)</li> <li>• License for enterprise engaging in design of construction projects</li> <li>• License for foreign-invested construction enterprise</li> <li>• License for foreign-invested enterprise engaging in design of construction projects</li> <li>• License for operating ports</li> </ul>
<b>Simplifying the handling process</b>	<p>Under the pilot program expansions of Circular 12, 32 administrative items will be dealt with in a more simplified and efficient way. This covers:</p> <ul style="list-style-type: none"> <li>• Obtaining tax invoices</li> <li>• Tax filings for small-scale VAT taxpayers</li> <li>• Recordal for imported medicine</li> <li>• Registration for imported medical materials</li> </ul>

Reference: Fa Gai Wai Zi [2018] No. 251  
 Issuance date: 31 January 2018  
 Effective date: 1 March 2018

Relevant industries:  
 Sensitive industries for  
 outbound investment  
 Relevant companies:  
 Enterprises that embark on  
 outbound investment  
 Relevant taxes: N/A

Potential impacts on  
 businesses:

- Regulatory requirements increased
- Compliance risks due to regulatory uncertainties reduced

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## Further guidance for outbound investment

In December 2017, the National Development and Reform Commission (NDRC) issued the [Administrative Measures for Outbound Investment by Enterprise](#) ("the 2017 OI Measures") with the issuance of NDRC order No. 11. From 1 March 2018, the 2017 OI Measures supersede the [Administrative Measures on Approval and Filing for Outbound Investment Projects](#) (issued in 2014 under NDRC order No. 9) to regulate outbound investments (see KPMG [China Tax Weekly Update \(Issue 1, January 2018\)](#) for details).

According to the 2017 OI Measures, outbound investments made in sensitive industries, directly or indirectly through controlled overseas enterprises, by domestic enterprises and individuals, shall be subject to NDRC's pre-approval. The sensitive industries include:

- Research and development / manufacturing and repair of weapons;
- Cross-border water resource exploration and exploitation;
- News media industry;
- Restricted industries detailed under China's macroeconomic control policy, such as real estate, hotels, etc. as set out in Guo Ban Fa [2017] No. 74 (see KPMG [China Tax Weekly Update \(Issue 33, August 2017\)](#) for details).

On 31 January 2018, NDRC issued [Fa Gai Wai Zi \[2018\] No. 251](#), providing a [list](#) (2018 edition) setting out further details on sensitive industries. This basically integrates the restricted industries set out in Guo Ban Fa [2017] No. 74 into the 2018 edition list, including:

- Real estate;
- Hotels;
- Cinemas;
- Entertainment;
- Sports clubs; and
- Setting up private equity funds or investment platforms without already having concrete projects planned for overseas

From 1 March 2018, when making an outbound investment, the 2017 OI Measures and this NDRC list should be read together.

### Other recent regulatory circulars for outbound investment:

- On 25 January 2018, seven government authorities jointly issued [Interim Measures for Recordal / Pre-approval of Outbound Investment](#) (Shang He Fa [2018] No. 24, ("Circular 24")). The relevant authorities were the Ministry of Commerce (MOFCOM), People's Bank of China (PBOC), State-owned Assets Supervision and Administration of the State Council (SASAC), China Banking Regulatory Commission (CBRC), China Securities Regulatory Commission (CSRC), China Insurance Regulatory Commission (CIRC), and State Administration of Foreign Exchange (SAFE). Circular 24 set out the framework system for the oversight of outbound investment activity (see KPMG [China Tax Weekly Update \(Issue 5, February 2018\)](#) for details).
- On 12 June 2017, the Ministry of Finance (MOF) issued [Financial Administrative Measures for State-owned Enterprises Making Outbound Investment](#) (Cai Zi [2017] No. 24), which seeks to enhance the administration on Chinese state-owned enterprises (SOEs) evaluating their outbound investments (see KPMG [China Tax Weekly Update \(Issue 31, August 2017\)](#) for details).

- On 6 December 2017, NDRC issued Fa Gai Wai Zi [2017] No. 2050, along with five other authorities including MOFCOM and PBOC. This sets out the guidance to regulate outbound investment activities made by private-owned enterprises (POEs) (see KPMG [China Tax Weekly Update \(Issue 50, December 2017\)](#) for details).
- In October 2017, the State Administration of Taxation (SAT) released *Tax Guidance for Outbound Investment* ("the OI Guidance"). This aims to better serve the national external economic strategy, and lower "going out" taxpayers' tax risks. The OI Guidance summarizes 83 items which has been divided into four categories: tax policies, tax treaties, administrative rules and tax service measures. Each item consists of four sections, specifying applicable taxpayers, applied tax policies/treaties, application condition and legal basis (see KPMG [China Tax Weekly Update \(Issue 43, November 2017\)](#) for details).

In relation to key corporate tax issues that "going out" enterprises may face, and how the SAT is supporting Chinese companies navigate through these overseas tax challenges, see an article entitled ***A thousand miles begin with a single step: tax challenges under the BRI*** in the following publication which was produced by KPMG China in association with the International Tax Review (ITR):

❏ [China Looking Ahead \(7<sup>th</sup> edition\)](#)

Reference: N/A  
 Issuance date: 14 February 2018  
 Effective date: N/A

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

Potential impacts on businesses:

- Operational costs reduced

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## China's support for sustainable tax systems

The [First Global Conference of the Platform for Collaboration on Tax](#) was held on 14 to 16 February 2018 at the United Nations (UN) New York HQ. The conference was organized by the International Monetary Fund (IMF), Organization for Economic Co-operation and Development (OECD), UN and World Bank (WB) with approximately 500 representatives from 119 countries. The conference focused on tax policy and administration approaches to meet the UN's sustainable development goals.

Mr. Wang Jun, Director of the SAT, spoke at the conference, sharing insights from Chinese tax administration, and proposing:

- To enhance global tax collaboration with the addition of more organizations and jurisdictions;
- To jointly develop fair and universal international tax rules;
- To promote sustainable development through the platform for collaboration on tax.

China has actively been participating in international tax reforms, including the G20/OECD BEPS program, and other bilateral and multilateral initiatives. During the 11<sup>th</sup> meeting of the Forum of Tax Administration (FTA) in Norway in September 2017, Mr. Wang highlighted that:

- China has entered into bilateral/multilateral tax cooperation and collaboration arrangements with 25 international organisations and regional tax organisations, such as the UN, IMF, and OECD.
- China has also set up bilateral tax cooperation mechanisms with 116 jurisdictions and entered into tax treaties or protocols with 54 jurisdictions along the "Belt and Road".

(see KPMG [China Tax Weekly Update \(Issue 40, October 2017\)](#) for details).

Reference: N/A  
 Issuance date: 8 February 2018  
 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 avoidance arrangements increased

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

## OECD moves on BEPS implementation

On 8 February 2018, the [Inclusive Framework](#) on BEPS released additional guidance on the implementation of Country-by-Country (CbC) reporting (BEPS Action 13). The Inclusive Framework also endorsed the latest results from the preferential tax regime reviews being conducted by the Forum on Harmful Tax Practices (FHTP) in connection with BEPS Action 5.

### Further guidance on CbC reporting

The [additional guidance](#) addresses two specific issues: (i) the definition of total consolidated group revenue; and (ii) where a jurisdiction does not meet the conditions of confidentiality, appropriate use and consistency conditions, would the suspension of exchanging CbC report constitute a systemic failure.

This is the seventh set of CBC guidance provided by the OECD (See KPMG [China Tax Weekly Update \(Issue 36, September 2017\)](#), [\(Issue 29, July 2017\)](#), [\(Issue 16, April 2017\)](#), [\(Issue 48, December 2016\)](#), [\(Issue 41, November 2016\)](#) and [\(Issue 47, December 2017\)](#) for the previous six rounds of CbC guidance issued by the OECD).

### Updated conclusions on preferential tax regimes

In the [2017 Progress Report on Preferential Regimes](#), the Inclusive Framework concluded two Barbadian<sup>1</sup> regimes as "potentially harmful", namely the International Financial Services and the Credit for Foreign Currency Earnings/Credit for overseas projects or services.

However, as Barbados is committed to amend these regimes within FHTP's agreed timeline and requirements, the Inclusive Framework has updated the conclusions for these two regimes to "in the process of being amended".

In the [2004 Progress Report](#), Canada's regime for international banking centres (IBCs) was determined to be "potentially but not actually harmful" by the FHTP. Canada has abolished the IBC regime, with limited grandfathering rules which is consistent with the FHTP guidance and therefore the conclusion for this regime is updated to "abolished".



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