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Issuance date: 14 March 2018
Effective date: N/A

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

Potential impacts on businesses:

- Compliance costs reduced

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State Council 2018 legislation work plan

On 20 March 2018, the State Council issued Guo Ban Fa [2018] No. 14, announcing their 2018 legislation work plan. The plan sets out the following tax law legislation items to be approved by the Standing Committee of the National People's Congress (NPC):

- Revised tax collection and administration law
- Vehicle purchase tax law
- Arable land occupation tax law
- Resource tax law
- Implementation rules for the corporate income tax (CIT) law

All of these will be drawn up by the State Administration of Taxation (SAT) and Ministry of Finance (MOF).

The plan also sets out legislation items relevant for investment and business operations of foreign enterprises in China, including:

- Foreign investment law (drafted by MOFCOM and NDRC)
- Regulations for the national security review of foreign investment (drafted by NDRC)
- Interim regulations for the administration of private investment funds (drafted by CSRC)

China's 13th National People's Congress (NPC) and the Chinese People's Political Consultative Conference (CPPCC) held meetings in the period March 3-20 2018. Premier Li Keqiang, in the course of his government work report address to the NPC, highlighted that China will further reduce enterprise tax burdens and local fees and fund contributions, through:

- Consolidating the existing three VAT rates (reduced from four in 2017) to two rates;
- Expanding preferential CIT treatments;
- Individual income tax (IIT) reform (e.g. raising the IIT entry threshold)

(see KPMG *China Tax Weekly Update (Issue 10, March 2018)* for details).

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Relevant industries: Financial sector
Relevant companies: Securities companies
Relevant taxes: N/A

Potential impacts on businesses:
- Threshold for foreign investment lowered

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China to ease limits on foreign investment in securities companies

At the 10 November 2017 China-US economic cooperation meeting, China committed that it will lift the ceiling on foreign equity ownership in securities, fund management and futures companies from 49% to 51%. China will eliminate all equity ownership limits once this initial relaxation to 51% has been in place for three years (i.e., where the relaxation to 51% is in place from 2018 to 2020, the full relaxation will take effect from 2021).

To fulfill the commitment, China Securities Regulatory Commission (CSRC) on 9 March 2018 issued the draft *Administrative Measures on Foreign-invested Securities Companies* (the "2018 draft measures") to solicit public comments.

The draft measures make revisions to the existing *Rules on Establishment of Foreign-invested Securities Companies* (issued under CRSC Order No. 86, referred to as the "2012 measures"), including:

- **Allow foreign investors to control joint-venture securities companies.** The 2018 draft measures clarify that the ceiling for all foreign equity ownership in a joint-venture securities company may not exceed the commitment that China has made for the opening up of the securities sector (i.e., currently 51%).
- **Gradually expand the business scope of joint-venture securities companies.** Newly established joint-venture securities companies are allowed to apply for a registered scope of securities business activity which mirrors the securities business experience and competences of its controlling or largest shareholder. This may allow for broader scope of activities where the parent company is highly experienced in certain fields.
- **Relax the provisions on foreign equity ownership in listed securities companies.** The equity ownership limits will be lifted to 51% for foreign investment in listed securities companies (taking several foreign investors collectively). This is in line with the foreign equity ownership limits set for non-listed securities companies. Also, the equity ownership limits for a single foreign investor in listed securities companies will be relaxed. Under the draft measures, a single foreign investor is allowed, directly or indirectly, to hold up to 30% (currently 20%) of the equity of a listed securities company.
- **Clarify the requirements for indirect foreign investment in Chinese-funded securities companies.** There may be cases where the effective controlling party, of a Chinese-funded securities company, changes from being a Chinese person to a foreign person, without there being a change in the direct equity holder of the securities company. This could be where there is a change in the ownership of a higher-tier overseas holding company, i.e. an indirect offshore transfer. To address this, the draft measures look through such arrangements and require the new foreign investors, who have taken control, to meet certain qualifying conditions (such as having solid internal control system) within 3 months.
- **Improve qualifying conditions for foreign investors.** The draft measures amend the following qualifying conditions:

  (i) Foreign investors must now all be financial institutions. Under the 2012-issued rules, this requirement was 'one foreign investor at least should be a financial institution';

  (ii) Under the 2012 measures foreign investors had to have a good international reputation and solid business performance. The 2018 draft measures add to this that, in the past three years, their global business scale, revenue and profits must have been at the forefront of the world, and they must have highly-scored long-term credit rating.

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At the China-US economic meeting, China has also made commitments, in particular, on (i) removing the foreign equity ownership holding requirement for Chinese-funded banks and financial asset management companies; (ii) relaxing the foreign investor equity holding limit for life insurance companies; and (iii) reducing customs duty for imported automobiles (see KPMG *China Tax Weekly Update (Issue 45, November 2017)* for details).

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

Potential impacts on businesses:
- Tax burden increased

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OECD Interim Report on tax challenges of digitalisation

On 16 March 2018, the Interim Report on the Tax Challenges Arising from Digitalisation (Interim Report), prepared by the Task Force on the Digital Economy (TFDE), was released on to the OECD website.

The Interim Report reviews the progress made in tackling the issues of double non-taxation and aggressive tax planning which motivated the 2013-2015 Base Erosion and Profit Shifting (BEPS) project to reform global tax rules. It surveys the increasing adoption, across countries, of unilateral measures to tax digitalised businesses. It sets out a new theoretical framework for analysing the value creation processes in digitalised business models to underpin the revision of international tax rules. Most importantly, the report makes clear that while there is no current consensus among countries on how to revamp the international tax framework for the digital era, and no consensus on the use of interim measure turnover taxes, the Inclusive Framework on BEPS will seek to arrive at a new global consensus by 2020.

The 218 pages of the Interim Report are divided into eight chapters, the most important of which are: (i) Chapter 5, 'Adapting the International Tax System to the Digitalisation of the Economy', which sets out the alternative views of countries on the need for long-term restructuring of international tax rules; and (ii) Chapter 6, 'Interim Measures to address the tax challenges arising from Digitalisation', which sets out the conflicting positions of countries on the need for interim measure turnover taxes.

With regard to the detailed analysis of the Interim Report, please read the following KPMG publication:

- *China Tax Alert: OECD Task Force on the Digital Economy release Interim Report (Issue 8, March 2018)*

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Relevant industries: All
Relevant companies: Non-resident enterprises
Relevant taxes: All

Potential impacts on businesses:

- Compliance and regulatory requirements increased

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OECD anti-abuse rules for tax information exchange

On 9 March 2018, the OECD has issued new model disclosure rules that require lawyers, accountants, financial advisors, banks and other service providers to inform tax authorities of any schemes they put in place for their clients to avoid reporting under the OECD/G20 Common Reporting Standard (CRS) or prevent the identification of the beneficial owners of entities or trusts.

According to the CRS requirements, over 100 jurisdictions have commenced the reporting and automatic exchange on offshore financial accounts this year. Many taxpayers having disclosed offshore assets, and around EUR 85 billion in additional tax revenue identified as a result of voluntary compliance mechanisms and offshore investigations.

At the same time, per the OECD, there are still persons that, often with the help of advisors and financial intermediaries, continue to try hiding their offshore assets and fly under the radar of CRS reporting. The new rules target these persons and their advisers, by introducing an obligation on a wide range of intermediaries to disclose the schemes to circumvent CRS reporting to the tax authorities. The new rules also require the reporting of structures that hide beneficial owners of offshore assets, companies and trusts.

These model disclosure rules will be submitted to the G7 presidency and are part of a wider strategy of the OECD to monitor and act upon tendencies in the market that try to avoid CRS reporting and hide assets offshore. As part of this work, the OECD is also addressing cases of abuse of golden visas and similar schemes to circumvent CRS reporting.

China is set to commence CRS exchanges in the 'second wave' in September 2018. To facilitate this, in May 2017, six government authorities, including SAT, MOF and People's Bank of China (PBOC) issued the "Measures on the Due Diligence of Non-resident Financial Account Information in Tax Matters" (the "Measures"), and financial institutions in China are currently putting the systems and protocols in place to enable collection and reporting of the requisite non-resident account holder information (see KPMG *China Tax Weekly Update (Issue 21, May 2017)* for details).

Subsequently, on 18 December 2017, the PBOC, SAT and State Administration of Foreign Exchange (SAFE) jointly issued Yin Fa [2017] No. 278. This set out further guidance to facilitate the implementation of the Measures (see KPMG *China Tax Weekly Update (Issue 2, January 2018)* for details).

With regard to the detailed content and impact of the Measures, you can read the following publications:

- *China Tax Alert: Measures on the Due Diligence of Non-resident Financial Account Information in Tax Matters (AEOI Standard / CRS in China) (Issue 16, May 2017)*
- An article entitled *A brave new world in tax transparency: CRS in China, Hong Kong and Taiwan* in *China Looking Ahead (7th edition)* (produced by KPMG China association with the International Tax Review)

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