

China Tax Weekly Update

ISSUE 21 | May 2018

Reference: Shui Wei Hui
[2018] No. 3
Issuance date: 22 May 2018
Effective date: 1 July 2018

Relevant industries:
Automobile sector
Relevant companies:
Enterprises importing
automobiles and auto parts
Relevant taxes: Import tariff

Potential impacts on
businesses:
• Operational costs reduced

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

Import tariff reduction for automobiles

On 22 May 2018, the Customs Tariff Commission of the State Council issued [Shui Wei Hui \[2018\] No. 3](#) ("Circular 3"). This clarifies that, from 1 July 2018, import tariffs rates on automobiles and auto parts will be reduced.

The reduction of import tariffs is in line with a [keynote speech](#) made by Chinese President Xi Jinping at the opening ceremony of the Boao Forum for Asia (BFA) Annual Conference on 10 April 2018. President Xi highlighted that, China will significantly reduce import tariffs for imported automobiles (currently 25%) in 2018. Reduction of import tariffs, at the same time, will also apply to certain imported products (such as foodstuffs, cosmetics, garments). China will increase imports to take account of consumer needs and seek faster progress towards joining the WTO Government Procurement Agreement (see KPMG [China Tax Weekly Update \(Issue 15, April 2018\)](#) for details).

In particular, Circular 3 clarifies the following:

- Reduction of import tariff rates for the following automobiles to 15%:
 - Automobiles that fall within 135 HS-codes and are subject to import tariffs at 25%;
 - Automobiles that fall within 4 HS-codes and are subject to import tariffs at 20%;
- Reduction of import tariff rates for auto parts to 6%. Currently, such auto parts fall within 79 HS-codes and are subject to import tariffs at 8%, 10%, 15% and 20%.

With regard to Circular 3's impacts on the automobile industry please read the following KPMG publication:

- [China Tax Alert: Significant reduction of Import Tariffs on Automotive Vehicles and Parts \(Issue 12, May 2018\)](#)

Reference: Cai Shui [2018] No. 57

Issuance date: 16 May 2018
Effective date: 1 January 2018 to 31 December 2020

Relevant industries: All

Relevant companies:

Enterprises under restructuring

Relevant taxes: LAT

Potential impacts on businesses:

- Compliance costs due to regulatory uncertainties reduced
- Operational costs reduced

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

Continuation of existing restructuring tax incentives

On 23 March 2018, the Ministry of Finance (MOF) and State Administration of Taxation (SAT) jointly issued [Cai Shui \[2018\] No. 57](#) ("Circular 57"). This extends the existing land appreciation tax (LAT) incentive for restructuring of enterprises as set out in 2015-issued [Cai Shui \[2015\] No. 5](#) ("Circular 5"), which was due to expire on 31 December 2017.

According to Circular 57, the LAT exemption will continue for a period of three years, i.e., from 1 January 2018 to 31 December 2020, for the following restructuring activities:

- LAT exemption can apply where a business transfers its use right over state-owned lands, or buildings and fixtures, to a restructured enterprise. The relief solely applies to:
 - (i) Restructuring of an unincorporated business into a limited liability company or a joint stock company; or
 - (ii) Restructuring of a limited liability company into a joint stock company (pre-listing); or
 - (iii) Restructuring of a joint stock company into a limited liability company.

It is required that the original investors remain unchanged after restructuring, and the rights and liabilities in the original enterprise are inherited by the restructured enterprise. Changes to the capital contribution of the investors is allowed (e.g. initially investor A and investor B both invested RMB50 each and each own half the company. On the restructuring, investor B puts in RMB50 additional capital as a capital contribution, and now owns 66% of the restructured enterprise. This change does not affect the availability of the LAT relief).

- Relief also applies where two or more enterprises merge into a combined enterprise, and the investors in the original enterprises remain invested in the merged enterprise (changes to the capital contributions of the investors are allowed). In such case, the LAT exemption would apply if the real property of the original enterprises is transferred into the merged enterprise.
- Relief also applies where an enterprise splits into two or more enterprises, and the investors remain unchanged post restructure (changes to the capital contributions of the investors are allowed). In such case, the LAT exemption would apply if the real property of the original enterprise is transferred into the divided enterprises.
- In a restructuring, where an enterprise or individual makes an equity investment by using its real property, the transfer of the real property to the invested enterprise can be exempted from LAT.

In addition, Circular 57 also clarifies the following:

- The LAT relief would not apply if either of party involved in the restructuring is a real estate development company.

- Under the prior Circular 5, taxpayers were required to present certification of real property ownership and value to the tax authorities for the application of the LAT relief. Building on Circular 5, Circular 57 requires the following additional documentation, in particular, including:
 - Business license of the transferor and transferee of the real property;
 - Agreement of restructuring or equivalent documentation;
 - Receipt (photocopy) for land price paid by the transferor for obtaining the land use rights prior to restructuring.

It should be noted that a recordal filing for application of the LAT relief is still required. By contrast, in the corporate income tax (CIT) space, a self-assessment system for claiming CIT preferential treatment now is in place. Under this system, taxpayers are no longer required to send documents, up front, to the tax authorities for application of CIT reliefs. For more details, please read the following KPMG publication:

- [*China Tax Alert: Self-assessment system for claiming China tax incentives \(Issue 13, June 2018\)*](#)



Reference: N/A
 Issuance date: 17 May 2018
 Effective date: N/A

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

Potential impacts on businesses:

- Compliance costs due to regulatory uncertainties reduced
- Operational costs reduced

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2017 UN model tax treaty released

On 17 May 2018, the United Nations (UN) released the 2017 edition of [United Nations Model Double Taxation Convention between Developed and Developing Countries](#) ("2017 UN MTC"). The relevant updates in the 2017 UN MTC were agreed at the April 3-6 2017 UN Committee session in New York (see KPMG [China Tax Weekly Update \(Issue 15, April 2017\)](#) for details).

The most important changes, compared with the [2011 edition](#), are as follows:

- The preamble of the UN MTC is amended to clarify that treaties are not intended to be used to produce situations of double non-taxation. This is in line with the OECD BEPS updates in Action 6.
- Article 1 (Persons covered) is amended to include a fiscally transparent entity clause and a saving clause that clarifies that residence taxation is generally preserved under tax treaties. This is in line with the OECD BEPS updates in Actions 2 and 6.
- Article 4 (Resident) is modified to include a new tie-breaker rule for determining the treaty residence of dual-resident persons other than individuals. This means that the competent authorities will attempt to determine, by mutual agreement, the residence jurisdiction of a person having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by a treaty except to the extent and in such manner as may be agreed upon by the competent authorities. This is in line with the OECD BEPS updates in Action 6.
- Article 5 (Permanent establishment) is modified to prevent the avoidance of permanent establishment (PE) status. Paragraph 4 is amended to ensure that the specific activity exemptions cannot be used to artificially avoid PE status. Furthermore, an anti-fragmentation rule is added through a new paragraph 4.1. Finally, paragraphs 5 and 7 are amended to broaden the scope of the dependent agent PE rule to counter structures aimed at the avoidance of a PE (including commissionaire arrangements). This is in line with the OECD BEPS updates in Action 7.
- Article 10 (Dividends) is modified to change the circumstances in which a lower rate applies for dividends on direct ownership of shares above the 25% threshold. Accordingly, the company receiving the dividends must hold directly 25% of the company paying the dividends throughout a 365-day period including the day of the payment of the dividends. This is in line with the OECD BEPS updates in Action 6.
- Article 12A (Fees for technical services) is added to the UN MTC to allow source taxation on services by way of withholding tax at a percentage to be established through bilateral negotiation. This provision was developed by the UN Committee of Experts in 2017.
- Article 13 (Capital gains) is amended whereby paragraph 4 is replaced to widen the scope of the capital gains rule on interests deriving more than 50% of their value directly or indirectly from immovable properties. Furthermore, paragraph 5 of article 13 is modified for consistency with paragraph 4 of the same article. This provision was developed by the UN Committee of Experts.
- Articles 23 A and 23 B are amended to clarify that there is no obligation to provide relief for tax imposed solely on a residence basis. This is in line with the OECD BEPS updates.
- A new Article 29 is added to the UN MTC on entitlement to treaty benefits which includes a limitation on benefits rule in addition to a general anti-avoidance rule (principal purpose test) which is similar to the one included under article 29 of the [2017 OECD Model Convention](#). This is in line with the OECD BEPS updates in Action 6.

Other recent regulatory and tax circulars:

- ❑ [Reform plans for Guangdong, Tianjin and Fujian Free Trade Zones \(FTZs\)](#) (issued on 24 May 2018)
- ❑ [China to promote FTZ reforms throughout the country](#) (Guo Fa [2018] No. 12, issued on 2 February 2018)
- ❑ [Shandong issues implementation measures on incentives for headquarters](#) (Lu Shang Fa [2018] No. 2, issued on 15 May 2018)
- ❑ [CBIRC's notice on interim administrative measures on commercial endowment insurance businesses qualifying for preferential IIT treatment](#) (Yin Bao Jian Fa [2018] No. 23, issued on 18 May 2018)
- ❑ [MIIT and SAT set out a list of new energy vehicles that are not qualify for vehicle purchase tax exemption](#) (Announcement [2018] No. 27, issued on 21 May 2018)

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