

China Tax Weekly Update

ISSUE 23 | June 2018

Reference: Cai Shui [2018] No. 53

Issuance date: 5 June 2018

Effective date: 1 January 2018

Relevant industries:

Publishing sector etc.

Relevant companies:

Publishing enterprises,
enterprises engaged in
wholesale or retail of books

Relevant taxes: VAT

Potential impacts on
businesses:

- Actual tax burden reduced

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Continuation of VAT incentives for publishing, book sales

On 23 March 2018, the Ministry of Finance (MOF) and State Administration of Taxation (SAT) jointly issued [Cai Shui \[2018\] No. 53](#) ("Circular 53"). This extends the existing value-added tax (VAT) incentive for enterprises engaging in defined 'cultural publicity' activities (such as publishing, books wholesale) as set out in 2013-issued Cai Shui [2013] No. 87 ("Circular 87"), which was due to expire on 31 December 2017.

According to Circular 53, the VAT incentives will continue for a period of three years, i.e., from 1 January 2018 to 31 December 2020, as follows:

- The VAT "levy first, then refund later" policy. In China, this policy generally applies to export of goods, however, this also applies to domestic sales for certain industries or for certain products, such as for the publishing industry.
 - "Levy first, then 100% refund later" which applies to:
 - ❑ Certain publications (such as textbooks for primary and secondary school students, braille books, specific books / newspapers / journals listed in Attachment I of Circular 53). The VAT "levy first, then 100% refund later" policy will be applied at the publishing stage.
 - ❑ Printing or producing publications using minority languages (such as Tibetan) as well as printing businesses carried out by Xinjiang enterprises listed in attachment III of Circular 53.
 - "Levy first, then 50% refund later" applies to:
 - ❑ books / journals / audio visual products / e-publications (other than those qualifying for "levy first, then 100% refund later" policy as noted above) as well as newspapers listed in attachment II of Circular 53. The VAT "levy first, then 50% refund later" policy will be applied at the publishing stage.

Currently, where an e-publication is deemed as a software product, it is subject to VAT "refund-upon-levy" policy, i.e. the portion of the effective tax burden in excess of 3% shall be refunded upon collection of VAT. In this regard, Circular 53 clarifies that if an e-publication has enjoyed the "refund-upon-levy" policy, then the VAT "levy first, then refund later" will not be applied.

Reference: Jiao Ban Yun [2018] No. 68
 Issuance date: 30 May 2018
 Effective date: N/A

Relevant industries:
 Transportation industry
 Relevant companies:
 Enterprises engaged in transportation services
 Relevant taxes: N/A

Potential impacts on businesses:

- Compliance costs increased

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China to further regulate online taxi services

In 2016, various Chinese governmental authorities set out several rules to legalize internet-based taxi services and to push forward the development of car-hailing platforms (see KPMG [China Tax Alert \(Issue 29, August 2016\)](#) and [\(Issue 44, November 2016\)](#) for details).

On 30 May 2018, seven government authorities jointly issued Jiao Ban Yun [2018] No. 68 ("Circular 68") which aims to enhance the supervision of internet-booked taxi services. The seven authorities include the Ministry of Transport, Office of the Central Cyberspace Affairs Commission, Ministry of Industry and Information Technology, Ministry of Public Security, the People's Bank of China, SAT and State Administration for Market Regulation.

Specifically, Circular 68 sets out the following measures:

- Implementing joint supervision, by these seven authorities, over rule violations by platforms. The violations, in particular, include:
 - Car-hailing platforms engaged in providing internet-booked taxi services, which have not obtained a Business Certificate for Internet-booked Taxi Services from the administration of the taxi industry.
 Under the current rules, an internet-based car-hailing platform is allowed to carry out the business upon obtaining: (i) a certification; and (ii) completion of a recordal filing for internet information services with the provincial administration for communication where the platform is registered.
 - Inconsistencies between the information provided online (e.g., on the car and driver) and the actual service provider
 - Disclosure of clients' information (to third-parties);
 - Tax avoidance;
 - Unfair competition (such as charging low fares to squeeze out competitors or monopolising the market)
- Internet-based car-hailing platforms are not allowed to carry out any internet-booked taxi services without obtaining prior approval. If this is the case, the administration for the taxi industry at the county-level or above is empowered to punish the platforms.
- Violations committed by internet-based car-hailing platforms which have obtained the permission to carry out internet-booked taxi services, will be punished by the relevant government authorities within their areas of responsibilities. Where the violations relate to multiple authorities, the authorities should arrange a joint discussion with the platforms.
- Where the platforms refuse to rectify the violations, their mobile apps which are used to support their internet-booked taxi services, will be suspended. In the case of continued violations: (i) the regulatory authority on telecommunication will stop providing internet services to the platform; or (ii) the public security bureau at where the platform is located will either restrict the platform from connecting to the internet or suspend their services for rectification for 6 months.

Reference: N/A
 Issuance date: 24 May 2018
 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 arrangements increased

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OECD peer reviews on BEPS Action 13 Country-by-Country reporting

On 24 May 2018, the OECD released the [first peer reviews of the Country-by-Country \(CbC\) reporting initiative](#), demonstrating strong progress on a key initiative for strengthening taxation of multinational enterprises (MNEs) worldwide.

The first annual peer review report on the implementation of the Action 13 minimum standard was released shortly after the second annual peer review was launched for the 2018-2019 period. The first annual peer review report were prepared for the 95 jurisdictions including China, which provided legislation and/or information relating to the implementation of CbC Reporting.

In line with the agreed methodology for the peer review process, China's CbCR regime is analyzed in light of its (i) domestic legal and administrative framework, (ii) exchange of information network, and (iii) appropriate use of the instrument.

i. Domestic legal and administrative framework

There are issues with China's CbC Reporting framework that appear to be inconsistent with the OECD's terms of reference, as published in 2017.

The **first inconsistency** relates to a CbC Reporting filing exception. In accordance with the Chinese legislation, an MNE with a Chinese Ultimate Parent Entity (UPE) would be exempted from filing, in whole or in part, if the information relates to "national security". Since the term "national security" is not defined, it could be interpreted in a broad manner, which is inconsistent with the minimum standard. Thus, it is recommended that China clarifies the exact scope, conditions and legal basis for this exemption.

The **second inconsistency** relates to situations where a Chinese-resident entity would be required to file a CbC Reporting, despite the fact that it is not an UPE. In accordance with the terms of reference, this requirement would be legitimate when the MNE has the obligation to file in accordance with the legislation of any other country, but has failed to do so. In other words, the tax administration can request the enterprise (that it not an UPE or resident enterprise that has been appointed by the MNE Group to file the CbC report) to provide the CbC report during a special tax investigation if the MNE to which the enterprise belongs to is required to prepare a CbC report in accordance with the relevant regulations of another country and the MNE has not filed the CbC report to any other countries. The Chinese legislation, by contrast, seems to cover situations where, for instance, there is no international instrument providing for the exchange, or when the jurisdiction of the UPE has failed to exchange the CbC Report with China for reasons other than systemic failure.

China has submitted that the differences above are attributable to differences between the languages and structure of the legislation, and it was not intended to deviate from the model legislation. Moreover, China has represented that it will issue a legislation to address any required clarifications.

ii. The exchange of information network

While China has a large a number of bilateral Double Tax Agreements and Tax Information and Exchange Agreements which allow for automatic exchange of information, and is a signatory to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (Convention), China is still unable to exchange (either send or receive) CbC reports related to 2016 (In particular, while China has signed the supplemental CBC MCAA, linked to the Multilateral Convention as a specific basis for CbC report exchanges, the Multilateral Convention is only effective for China from January 1st, 2017. It might also be noted that, apart from the three activated CbC MCAA relationships, with Germany, France and the UK, China has not yet fully activated its exchange relationships with all relevant countries through the CBC MCAA. In this context, the Chinese authorities has clarified that they do not plan to conduct any exchange of 2016 tax year CbC reports received from Chinese MNEs. This was set out in SAT Announcement No. 46, issued on 19 December 2017. At the same time, for symmetric treatment, the SAT also clarified that Chinese tax authorities will not demand Chinese subsidiaries of foreign MNEs to provide the 2016 group CbC Report in the course of tax audits. CBC Report exchanges will be made with Germany, France and the UK for taxable periods starting on or after January 1st, 2017 – further countries can be brought in the scope of exchanges as the CBC MCAA relationships with them are activated by China and the counterparty countries) and will not be able to exchange reports under the Convention and CbC Multilateral Competent Authority Agreement (MCAA) on the first exchange date in mid-2018 (It should be noted that a CBC report for the fiscal year ended at 31 Dec 2017 would be exchanged by 31 March 2019).

Therefore, China is recommended to take steps to enable the exchange of information related to 2016 – by lodging a declaration to align the effective date of the Convention and the first intended exchanges in the CbC MCAA, or by relying on its extensive Double Tax Agreements network.

In addition, China has thus far only activated CbC relationships with three countries: France, Germany, and the United Kingdom.

China is therefore recommended to take further steps to have qualifying Competent Authority agreements with jurisdictions in the Inclusive Framework that meet the appropriate confidentiality and consistency conditions.

iii. Appropriate use

In accordance with the Guidance on the Appropriate Use of CbC Reports issued by the OECD in 2017, appropriate use is restricted to:

- High-level transfer pricing risk assessments;
- Assessment of other base erosion and profit shifting related risks; and
- Economic and statistical analyses, where appropriate.

This is to avoid CbC reports being used as a substitute for detailed transfer pricing analyses of specific transactions, or as a tool for making specific adjustments based on generic formulae.

China is therefore encouraged to take appropriate steps to ensure that CbC reports will only be used for the intended purposes.

* So far, the OECD has issued seven sets of CbC guidance (see KPMG [China Tax Weekly Update \(Issue 8, March 2018\)](#) for details).

Other recent regulatory and tax circulars:

- ❑ [SAT's notice on further enhancing government affairs transparency](#) (Shui Zong Ban Fa [2018] No. 79, issued on 31 May 2018)
- ❑ [Ministry of Culture and Tourism, MOF and SAT issue a list of animation enterprises qualifying for preferential CIT treatment in 2017](#) (Wen Lv Chan Fa [2018] No. 13, issued on 15 May 2018)
- ❑ [Sanya government issues interim administrative measures on promoting the development of headquarters economy in Sanya](#) (San Fu [2018] No. 112, issued on 8 June 2018)

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