

China Tax Weekly Update

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Reference: Cai Shui [2018]
No. 76
Issuance date: 11 July 2018
Effective date: 1 January
2018

Relevant industries: All
Relevant companies:
HNTEs and science and
technology SMEs
Relevant taxes: CIT

Potential impacts on
businesses:

- Operational costs
reduced

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

Reference: Cai Shui [2018]
No. 77
Issuance date: 11 July 2018
Effective date: 1 January
2018 to 31 December 2020

Relevant industries: All
Relevant companies: small
enterprises
Relevant taxes: CIT

Potential impacts on
businesses:

- Operational costs
reduced

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

CIT support for technology enterprises

At an executive meeting of China's State Council on 25 April 2018, Premier Li Keqiang announced that China's general restriction of a 5 year carry-forward period to tax losses is extended to 10 years for high and new technology enterprises (HNTEs) and science and technology small and medium sized enterprises (SMEs) (see KPMG [China Tax Weekly Update \(Issue 17, May 2018\)](#) for details). This is now in effect.

On 11 July 2018, the Ministry of Finance (MOF) and State Administration of Taxation (SAT) jointly issued [Cai Shui \[2018\] No. 76](#) ("Circular 76"), clarifying that unused losses incurred in the previous 5 years by an enterprise, prior to it qualifying as a HNTE or a science and technology SME, are allowed to be carried forward for another 5 years. Circular 76 retroactively applies from 1 January 2018.

For more information about the policies for HNTEs and science and technology SMEs, please read the following KPMG publications:

- [China Tax Alert \(Issue 14, May 2017\)](#)
- [China Tax Alert \(Issue 5, February 2016\)](#)

Further tax incentives for small enterprises

As highlighted in KPMG [China Tax Weekly Update \(Issue 17, May 2018\)](#), at an 25 April 2018 executive meeting of the State Council, Premier Li Keqiang outlined several tax reduction measures.

One of the measures was that from 1 January 2018 to 31 December 2020, eligible small enterprises, whose taxable income falls under RMB 1 million, may qualify for a reduced 10% effective CIT rate. Under this incentive, 50% of their income is taxed at a corporate income tax rate of 20%. The threshold was previously RMB 500,000 (which was itself increased from RMB 300,000 under [Cai Shui \[2017\] No. 43](#) in 2017, see KPMG [China Tax Weekly Update \(Issue 23, June 2017\)](#) for details).

Following this, the MOF and SAT on 11 July 2018 jointly issued [Cai Shui \[2018\] No. 77](#) ("Circular 77") further clarifying the qualifying conditions:

- **Number of employees** – may not exceed 100 employee for industrial enterprises and 80 employee for other enterprises;
- **Total assets** – may not exceed RMB30 million for industrial enterprises and RMB10 million for other enterprises.

These qualifying conditions are consistent with the existing rules.

Reference: Guo Ban Fa [2018] No. 53
 Issuance date: 9 July 2018
 Effective date: 9 July 2018

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

Potential impacts on businesses:

- Restriction on foreign investment may be lowered

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Guidance to foster China imports

In April 2018, Chinese President Xi Jinping indicated that China will (i) seek to expand imports; (ii) significantly reduce import tariffs for imported automobiles and consumer goods (see KPMG [China Tax Weekly Update \(Issue 15, April 2018\)](#) for details). To put these commitments into effect, the SAT and MOF had issued [Shui Wei Hui \[2018\] No. 3](#) and [No. 4](#) in tandem in May 2018. Effective from 1 July 2018, import tariff rates on automobiles, auto parts and certain daily consumer goods (such as foodstuffs, cosmetics, garments) will be reduced (see KPMG [China Tax Weekly Update \(Issue 21, May 2018\)](#) and [\(Issue 22, May 2018\)](#) for details).

Going still further, on 9 July 2018 China's State Council approved [guidance](#) to foster foreign trade under Guo Ban Fa [2018] No. 53. The guidance was jointly developed by 20 governmental authorities including the Ministry of Commerce (MOFCOM), MOF, SAT, etc.

The guidance sets out a number of general objectives, though specific rules are yet to be developed by the relevant governmental authorities. As such the precise actions that will be taken remain to be seen. Guidance objectives include:

- Support importation of consumer goods, medicines and rehabilitation/nursing equipment. This includes reducing import tariffs for certain products and regulating pricing and markup levels.
- Improve the 'duty free shop' policies to increase imports of goods sold duty free at ports and airports.
- Amend the [Catalogue of Encouraged Imported Services](#). Imported services, such as building design, R&D, consulting, trade related services, and services related energy conservation and environmental protection, will be encouraged.
- Amend the [Catalogue of Encouraged Imported Technology and Products](#). Increase imports of technology, equipment and parts so as to facilitate the upgrade of traditional industries.
- Increase imports of agriculture products in short supply on the domestic market, as well as agriculture materials and machinery.

We will provide further updates on subsequent developments.

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

Relevant industries: E-commerce industry
 Relevant companies: Enterprises carrying out e-commerce activities
 Relevant taxes: N/A

Potential impacts on businesses:

- Compliance risks due to regulatory uncertainties reduced
- Compliance costs increased

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

E-commerce Law progresses to third draft

On 19 June 2018, the Standing Committee of China's National People's Congress (NPC) reviewed the third version of the draft E-commerce Law ("third draft bill"). The draft bill has been published on NPC's website to solicit public comments by 28 July 2018.

Prior to this, the first and second draft e-commerce bills were submitted to the NPC for review in December 2016 and October 2017, respectively. See KPMG [China Tax Weekly Update \(Issue 49, December 2016\)](#) for details of the first draft bill. The key highlights of the second draft bill included:

- It was provided in the second draft bill that the E-commerce Law would apply to 'e-commerce activities in China'. This replaced the wording in the first draft bill, which provided that the law would apply to (i) e-commerce activities occurring within China; and (ii) e-commerce activities involving domestic e-commerce operators or consumers. The wording is ambiguous on how the provisions of the law relate to cross-border e-commerce activities.
- E-commerce operators were defined to include three categories: e-commerce platform operators, operators who carry out their businesses through the third-party platforms ("operators through the platform"), and operators who build their own websites to support their businesses.
- The following services were excluded from the application of the E-commerce Law:
 - Financial products and services;
 - Web broadcasting of audio/video programs;
 - Online publishing; and
 - Cultural products that are produced and distributed through the internet (the items covered by this category remain to be defined).
- Enhanced emphasis was placed on the obligations and responsibilities of e-commerce operators, especially platform operators. For instance, obligations for ensuring fair trading practices, protecting intellectual property and personal information, safeguarding cybersecurity, etc.
- Rules were set out for signing and execution of e-commerce contracts, as well as for dispute resolution.
- Guidance for promotion of e-commerce was set out for the specific cases of (i) rural e-commerce; (ii) cross-border e-commerce; (iii) e-commerce credit system establishment.

The third draft bill, taking into consideration the public comments on the second draft, makes the following key changes:

- The revised definition of "e-commerce operator", while retaining the three categories listed in the second draft bill, further clarified that these operators could be natural persons, legal persons and unincorporated organizations. "E-commerce operators" are defined as those engaged in business activities of selling goods or providing services through information networks, such as the internet.
- Consequently it is made clear that B2B, B2C and C2C activities, where they reach a sufficient degree of scale and organisation, are all in scope of the law. It is also made additionally clear that the selling of goods and provision of services, in the context of live streaming entertainment or via WeChat and other social media, are in scope of the law.

- The term “business activities” in the context of an “e-commerce operator” is clarified. This makes clear that non-business activities, such as transfer of personally used second-hand items, between end consumers, are excluded. In other cases, while the activities of a person may rise to the level of an “e-commerce operator”, they may still be excluded from the business registration requirement, due to a low level of activity.
- The third draft law clarifies that natural person e-commerce operators, who carry out intermittent transactions, for minor amounts of money, are exempted from business registration. However, such e-commerce operators are required to conduct tax registration and perform tax filings when thresholds are met for tax obligations.
- The third draft bill retains the reporting requirements for e-commerce platforms in relation to activities by traders and service providers through their platforms. However, due to a recent reorganization of Chinese government departments and agencies, there have been consequential adjustments to the reporting provisions.
- Under the second draft bill platforms were required report both identity information and business activities information on “operators through the platform” to both the SAIC and the tax authorities. In the interim, the SAIC has merged into the State Administration for Market Regulation (“SAMR”). Consequently, the third draft bill requires the platform to report solely operator identity information to SAMR, and both identity information and a widely drawn category of ‘tax-related information’ (which could of course include certain business related information) to the tax authorities.

Other recent regulatory and tax circulars:

- ❑ [Shanghai government sets out 100 opening-up measures](#) (released on 11 July 2018)
- ❑ [Guangdong government issues an action plan for reforming business environment in Guangdong province](#) (released on 11 July 2018)

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