

CHINA TAX ALERT

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Pilot Free Trade Zone Series — Shanghai Administration of Industry and Commerce issues *Trial Measures on Annual Corporate Public Reporting in Shanghai Pilot Free Trade Zone*

Regulations discussed in this issue:

- *Notice of the State Council on issuance of the Reform Plan on Registered Capital Registration System* (Guofa [2014] No. 7, issued on 7 February 2014)
- *Notices of Shanghai Administration of Industry and Commerce on the issuance of Trial Measures on Annual Corporate Public Reporting in Shanghai Pilot Free Trade Zone and the issuance of Trial Measures on Directory Management of Abnormal Companies in Shanghai Pilot Free Trade Zone* (Hu Gong Shang Guan [2014] No. 49, issued on 3 March 2014)

Background

On 7th February, the State Council released the *Reform Plan on Registered Capital Registration System* ("the Reform Plan"), the objective of which is to further relax regulation on market access and shift the supervision approach towards reporting. In particular, it includes the key innovation that sees the current corporate annual inspection system replaced by an annual corporate public reporting system.

Recently, the Shanghai Administration of Industry and Commerce simultaneously released the *Trial Measures on Annual Corporate Public Reporting in Shanghai Pilot Free Trade Zone* ("the Pilot FTZ") and the *Trial Measures on Directory Management of Abnormal Companies in Shanghai Pilot FTZ*, which require enterprises registered in Shanghai Pilot FTZ to release relevant business information to the public domain.

Enterprises should pay attention to the timeline and contents of annual reporting. Companies that fail to release their annual report within the designated period may be listed on the abnormal list, which will have adverse impact on the company's reputation. At the same time, the requirement of annual reporting and disclosure to the public sets a higher bar on information veracity, and companies should be more careful in this regard.

Key points

1) Scope of application

- Incorporated and unincorporated businesses and their branches with business licence obtained within the Pilot FTZ

2) Time of information release (note 1)

- From 1 March to 30 June each year, enterprises shall submit their annual report of the previous year via the enterprise credit and information disclosure system.

3) Content of annual reporting (note 2)

- Corporation: details of corporate registration and filing, payment status of registered capital, status of assets, operation status, number of staff and contact information
- Unincorporated business: details of corporate registration and filing, status of assets, operation status, number of staff and contact information
- Branch: details of branch registration and filing, operation status, contact information

4) Directory management of abnormal companies

- Companies that fail to release their annual report within the designated period, or are not reachable via their residence (business premises) shall have their abnormalities recorded in the enterprise credit and information disclosure system (the "abnormal list"), and such record shall be available to the public
- Enterprises that fulfill the annual reporting obligation or have their registration of residence (business premises) changed within three years of being put on the "abnormal list" can apply with the administration authorities of industry and commerce ("AAICs") to be removed from the list
- Enterprises that are put on the "abnormal list" by AAICs for three consecutive years shall be permanently listed on the "abnormal list" and on the list of companies committing serious illegal acts (the "blacklist")
- Legal representative(s) (personnel(s) in-charge) who are personally responsible for an enterprise on the permanent "abnormal list" shall not be allowed to act as legal representative(s) (personnel(s) in-charge) of other enterprises within three years from the date when the abnormal enterprise is permanently listed on the "abnormal list"

Note 1: Enterprises established in the year is obliged to fulfil the annual reporting obligation in the next year

Note 2: Listed companies, state-owned enterprises, companies whose subscribed registered capital or sales income exceeds RMB20 million and companies of certain special industries should also submit the annual audit report issued by accounting firms

KPMG observations

The reform on the supervision of enterprises can, on one hand, facilitate the annual reporting of enterprises via on-line system. On the other hand, with the enterprise credit and information disclosure system open to the public, the supervision on enterprises' credit can be strengthened, which in turn will promote business ethics among enterprises.

AAICs will spot check the contents of the annual reports, and name enterprises which do not fulfill the annual reporting obligation within the designated period. The administrative penalty mechanism is replaced by credit supervision mechanism to guide businesses towards compliant operation.

While detailed content requirements of the annual report are yet to be clarified, we understand from practice of other provinces that such details may include the name of the enterprise, its business premises, the name of its legal representative(s), a profile of senior management, its investment information and the status of its branches. The introduction of this annual report and online information system will increase the transparency of business operation of companies and will raise the standard and quality of information disclosure.

On 24 February, the Shanghai Administration of Industry and Commerce confirmed the cessation of the annual inspection. Though these trial measures are only applicable to enterprises in the Pilot FTZ for the time being, we expect that measures for enterprises outside the Pilot FTZ will be released soon.

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