

China Tax Weekly Update

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Reference: Guo Ke Fa Huo [2016] No. 32
Issuance date: 29 January 2016
Effective date: 1 January 2016

Relevant industries:
Industries fall within the scope of high and new technologies strongly supported by the government
Relevant companies:
Companies meet with the HNTe recognition requirements
Relevant taxes: CIT

Potential impacts on businesses:

- Possibility of qualifying for the HNTe relevant tax incentive need to be re-assessed

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

New version of *Administrative Measures for Recognition of High and New Technology Enterprise (HNTe)* released

On 13 January 2016, Standing Meeting of the State Council decided to revise the existing *Administrative Measures for Recognition of HNTe* (Guo Ke Fa Huo [2008] No. 172, "Circular 172") to give more priority to small-to-medium sized enterprises. On 29 January 2016, the Ministry of Science and Technology (MOST), the Ministry of Finance (MOF) and the State Administration of Taxation (SAT) jointly issued the revised *Administrative Measures for Recognition of HNTe* (Guo Ke Fa Huo [2016] No. 32, "Circular 32").

Compared to Circular 172, the broad principles behind Circular 32 remain the same. However, it adjusts the HNTe recognition requirements, as well as the procedures and supervision of the policy. Key changes of the HNTe recognition requirements include:

* Please note that the strikethrough text in the right column of the following table shows the main substantive deletions in Circular 32 relative to Circular 172.

Circular 32 (New)	Circular 172 (Old)
<ul style="list-style-type: none"> Companies shall <u>possess ownership of the IP rights which provide the core technological support for their main products/services</u>. These rights should be gained through independent research and development (R&D) activities, transfer, donation or acquisition <u>Technologies which provide core support to the companies' main products/services</u> fall within the scope of high and new technologies supported by the government 	<ul style="list-style-type: none"> Shall own proprietary IP for core technologies of its main products/services gained through independent R&D activities, transfer, donation or acquisition in the past three years, or through global exclusive license for over five years Products/services fall within the scope of high and new technologies strongly supported by the government

Circular 32 (New)	Circular 172 (Old)
<ul style="list-style-type: none"> Number of science and technology personnel engaged in R&D and related technology innovation activities should be more than 10% of the total employees of the company for the year 	<ul style="list-style-type: none"> Number of science and technology personnel with college degree or above should be more than 30% of the total employees of the company for the year, among which R&D personnel should be more than 10% of the total employees of the company for the year
<ul style="list-style-type: none"> For companies with annual sales under RMB 50 million for the latest year, the total R&D expenses should be no less than <u>5%</u> of the annual sales of that year for the latest three accounting years 	<ul style="list-style-type: none"> For companies with annual sales under RMB 50 million for the latest year, the total R&D expenses should be no less than 6% of the annual sales of that year for the latest three accounting years

For other key changes of the new Circular 32 compared to the old Circular 172 and the important impacts on businesses, you may click [here](#) to read the latest KPMG China Tax Alert: *New Version of Administrative Measures for Recognition of High and New Technology Enterprise (HNTE) Released (Issue 5, February 2016)*.

Reference: SAFE Announcement [2016] No. 1
Issuance date: 3 February 2016
Effective date: 3 February 2016

Relevant industries: Security investment industry
Relevant companies: QFII engaged in domestic security investments
Relevant taxes: N/A

Potential impacts on businesses:

- Restrictions on investments reduced
- Compliance costs reduced

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Administration for qualified foreign institutional investor (QFII) arrangements revised

The State Administration of Foreign Exchange (SAFE) recently issued SAFE Announcement [2016] No. 1 ("Announcement 1"). Announcement 1 revised the foreign exchange administrations on QFII, effective from 3 February 2016. Key points include:

- Relax the upper limit of the investment amount for a single QFII institution. A unified limit of the investment amount for each institution will no longer be set. Specific investment limit (basic limit) will be provided based on a certain portion of the size of the assets owned or managed by the organization.
- Simplify the approval procedures of the limit. Only record filing is required for limit application within the basic limit of the QFII. For limit application exceeds the basic limit, approval of the SAFE is required.
- Further facilitate the exchange of funds. Deadlines for remitting in of QFII investment capital is no longer set. QFII open fund is allowed to do daily subscription and redemption.
- Reduce the lock up period from one year to three months, but reserve the requirements that funds need to be remitted out in batches or stages. Total amount remitted out by a QFII per month shall not exceed 20% of its domestic assets.

Reference: GAC
Announcement [2016] No.6
Issuance date: 29 January
2016
Effective date: 29 January
2016

Relevant industries: Air
transport industry
Relevant companies:
Companies involved in cross-
border repair businesses of
air materials under a
guarantee arrangement
Relevant taxes: Import
Customs Duty / Import VAT

Potential impacts on
businesses:

- Restrictions on import
and export trade
businesses reduced
- Compliance risks due to
regulatory uncertainties
reduced

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

Import tax issues concerning repair businesses of air materials under a guarantee arrangement clarified

On 29 January 2016, the General Administration of Customs (GAC) issued GAC Announcement [2016] No. 6 ("Announcement 6"). Announcement 6 clarified the tax scope, documentation requirements and tax declaration and filing requirements on repair businesses of air materials under a guarantee arrangement. Key points include:

Definition	<ul style="list-style-type: none"> • "Repair of air materials under a guarantee arrangement" refers to the repair contract with a guarantee arrangement signed between a domestic airline company and an overseas repair service provider, under which the overseas service provider provides repair and maintenance services in accordance with the relevant contract. • The repair and maintenance services could be provided in either of the following ways: <ul style="list-style-type: none"> <input type="checkbox"/> Repair the damaged air materials directly <input type="checkbox"/> Exchange damaged air materials with serviced ones • The domestic airline company pays a package of repair fees to the overseas service provider by instalments in accordance with the contract.
Tax treatments	<ul style="list-style-type: none"> • The repair fees paid under the repair contract with a guarantee arrangement will be taxed by the Customs, while the air materials physically imported or exported will not be taxed. • The air materials physically imported and exported will be administrated by the Customs as "repaired items". The repair fees allocated to the air materials physically imported or exported in each period will be taxed. And the taxing period is determined based on the instalments made by the domestic airline companies as agreed in the repair contract with a guarantee arrangement. • Announcement 6 also clarified the treatments on circumstances such as when no air materials are physically imported or exported in a certain period, when the repair fees need to be adjusted based on the repair contract, or when aircraft leasing is involved, etc.
Execution date	<ul style="list-style-type: none"> • Announcement 6 took effect from 29 January 2016. Where the repair contract with a guarantee arrangement to air materials has been submitted to the Customs before the implementation of Announcement 6, the domestic airline shall re-submit the contract in accordance with the requirements of Announcement 6 within 3 months from the execution date of Announcement 6.

For detailed analysis on Announcement 6, please refer to the upcoming KPMG *China Tax Alert*.

Reference: GAC
Announcement [2016] No.8
Issuance date: 29 January
2016
Effective date: 29 January
2016

Relevant industries: Air
transport industry
Relevant companies:
Companies involved in cross-
border operating lease of
aircraft
Relevant taxes: Import
Customs Duty / Import VAT

Potential impacts on
businesses:

- Restrictions on import
and export trade
businesses reduced
- Compliance risks due to
regulatory uncertainties
reduced

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full content of the circular.

Administration on dutiable value for operating lease of aircraft revised

On 29 January 2016, the GAC issued GAC Announcement [2016] No. 8 ("Announcement 8"). Announcement 8 clarified certain issues in respect of the administration on dutiable value for operating lease of aircraft. Key points include:

- Overseas repair and maintenance costs borne by the lessee during the leasing period shall be taxed based on Article 28 of the *Measures of the PRC Customs on Determination of Dutiable Value for Imports and Exports* (GAC Announcement [2013] No. 213, "Announcement 213"). Article 28 of Announcement 213: For machinery and apparatus, transportation vehicles or other goods which are shipped to overseas for repair, dutiable value shall be examined and determined based on the overseas repair fee and the overseas materials and parts cost, on condition that the relevant goods have been declared with the Customs upon exit and shipped back to China within the stipulated period by the Customs.
- Announcement 8 also clarified whether the following expenses shall be regarded as rental fees and be included in the dutiable value:
 - ☐ Compensation costs, repair and maintenance expenses paid by the lessee to the lessor at the end of the leasing
 - ☐ Repair deposit which has not been returned to the lessee at the end of the leasing
 - ☐ Taxes borne by the lessee for the lessor based on the agreement
 - ☐ Insurance premium paid by the lessee
- Announcement 8 took effect from 29 January 2016. For repair and maintenance incurred, domestic taxes or insurance premium paid prior to January 29th, Announcement 8 also clarified the relevant treatments.

For detailed analysis on Announcement 8, please refer to the upcoming KPMG *China Tax Alert*.

Paperless customs clearance on automatic import permit expanded nationwide

Recently, the GAC and the Ministry of Commerce jointly issued Announcement [2016] No. 5 ("Announcement 5"). The paperless customs clearance on automatic import permit shall be expanded from the current 10 Customs to all Customs bureaux in China, effective from 1 February 2016.

The current effective scope of Announcement 5 limits to those goods which are administrated under "one permit for one batch" of the automatic import permit except for oil and fuel oil. Each import declaration form shall correspond to only one automatic import permit. For next step, the paperless customs clearance shall expect to be applied to all goods subject to automatic permit administration and all permit types.

Reference: GAC MOFCOM
Announcement [2016] No. 5
Issuance date: 25 January
2016
Effective date: 1 February
2016

Relevant industries: All
Relevant companies:
Companies engaged in
import and export
transactions
Relevant taxes: N/A

Potential impacts on
businesses:

- Compliance costs
reduced
- Cross-border trade
businesses facilitated

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full content of the circular.

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

Relevant industries: All
 Relevant companies:
 Enterprises in the Yangtze
 River Economic Belt
 Relevant taxes: All

Potential impacts on
 businesses:

- Compliance costs reduced
- Risks of being challenged due to non-compliance issues increased

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Measures to develop the Yangtze River Economic Belt

Based on a recent highlights published on the SAT website, recently, the SAT issued a series of measures to serve the development of the Yangtze River Economic Belt (Pan-Yangtze River Delta (Pan-YRD)). The provinces (cities) in the Yangtze River Economic Belt (Pan-YRD) are: Shanghai, Jiangsu, Zhejiang, Anhui, Jiangxi, Hubei, Hunan, Chongqing, Guizhou, Sichuan and Yunnan.

- In January 2016, the SAT officially launched the Tax Information Sharing Platform ("the Platform") among the tax authorities in Pan-YRD.
- Based on the Platform, tax authorities established the information exchange system for taxpayers going out of their own locations to do businesses, cross-location cooperation system for abnormal accounts and so on.
- Based on the Platform, the SAT also come up with the new measures to simplify the relocation procedures for taxpayers who require inter-province (city) relocation within Pan-YRD and to change in-charge tax authority. (There was a similar SAT notice on taxpayer relocations in Beijing, Tianjin and Hebei. You may click [here](#) to refer to our KPMG China Tax Weekly Update (Issue 3, January 2016) for details of that notice.)

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

Relevant industries: All
 Relevant companies:
 Companies have or plan to
 invest in "One Belt One
 Road" countries
 Relevant taxes: CIT/IIT

Potential impacts on
 businesses:

- Outbound investment costs reduced

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

Tax measures for the "One Belt One Road" strategy

Based on a recent highlights published on the SAT website, since 2015, the SAT have done a series of tax work to serve the "One Belt One Road" strategy, mainly include:

- Hold tax treaty negotiations or revision negotiations with Cambodia, Russia, Indonesia, India, Pakistan, and Romania.
- Research on tax information of other countries covering the "One Belt One Road" countries as well as the main investment countries of China's outgoing taxpayers. Currently, the investment tax guides for United States, Mongolia and Hong Kong region have been published on the SAT website. You may click [here](#) to access full related content.
- Issue the *Notice on Implementation of "One Belt One Road" Strategy in Taxation Service and Administration* and the *Announcement on Issues Relating to Withholding of CIT on Payments of Interest by Domestic Organisations to Overseas Branches of Chinese Banks*. These notices formulated 10 tax measures for the "One Belt One Road" strategy and reduced the tax burden for the going out banks.
- Other important work includes: establish the "One Belt One Road" tax service column on the official website, set up 12366 "Going Out" hotline and host a series of promotional activities, etc.

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

Relevant industries: All
 Relevant companies: All
 Relevant taxes: CIT/IIT

Potential impacts on businesses:

- Outbound investment costs reduced
- Transfer pricing risks increased
- Risks of being challenged due to cross-border tax anti-avoidance arrangements increased

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

SAT deepens global tax cooperation and upgrades international tax rules

The year 2015 is of great importance for G20. Based on a recent highlights published on the SAT website, SAT's intense participation in global tax cooperation brings China's international tax work to a new height.

- In 2015, the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters* was approved by the National People's Congress; the *Automatic Exchange Standard for Financial Tax-related Account* was approved by the State Council and signed up by the competent authorities; the *Plan for Deepening Reform of the State Tax and Local Tax Collection and Administration System* approved by the central government explicitly called for deepening of International tax cooperation.
- In order to transform the G20 tax reform achievements, SAT incorporated BEPS results into the revised version of the *Law of the People's Republic of China on the Administration of Tax Collection* and the *Individual Income Tax Law*. In multilateral cooperation, Chinese tax authorities actively participated in the formulating of international tax rules of the United Nations and the G20. The proposed principle that "profits should be taxed at where economic activities happen and where value is created" was successfully accepted by the G20.
- In 2015, China held tax treaty negotiations or revision negotiations with Cambodia, Russia, Indonesia, India, Pakistan, Romania and Zimbabwe; signed tax agreement with Chile and absorbed the latest achievements of BEPS; formally signed the mainland-Taiwan tax agreement. SAT has also deepened the tax cooperation with the Netherlands, Mongolia, Ethiopia and the BRICS countries.
- The results of BEPS were applied to the new anti-avoidance laws and regulations, including the *Administrative Measures on General Anti-Tax Avoidance*, the *Notice on the CIT of Transfer of Property between Non-resident Enterprises*, the *Announcement of the SAT on Issues relating to CIT on Expenses Paid by an Enterprise to its Overseas Affiliated Party* and the *Implementation Measures for Special Tax Adjustment*.
- According to the actual needs of international tax administration, the SAT developed the "international tax management information technology platform" to achieve the administration using information technology on non-resident taxation administration, outbound investment tax service and administration, information exchange, anti-tax avoidance, tax treaty query and inter regional cooperation, etc. In addition, the SAT also established a profit level monitoring system on multi-national enterprises, and built a multilateral tax data service platform.

Reference: N/A
 Issuance date: N/A
 Effective date: 1 January 2017

Relevant industries: All
 Relevant companies:
 Multinational enterprises
 Relevant taxes: All

Potential impacts on businesses:

- Transfer pricing risks increased

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

31 countries signed agreement to enable automatic sharing of country-by-country information

Based on a recent news on the OECD website, on 27 January 2016, 31 countries signed the Multilateral Competent Authority Agreement for the automatic exchange of Country-by-Country reports (CBC MCAA). These countries promised that the Country-by-Country reports that complied by MNEs shall be exchanged automatically among the countries.

The CBC MCAA is concluded on the legal basis of the *Multilateral Convention on Mutual Assistance in Tax Collection and Administration* ("the Multilateral Convention"), which has been signed by 92 countries including China. You may click [here](#) to access our KPMG China Tax Weekly Update (Issue 4, February 2016) for details of the Multilateral Convention. However, China is initially not amongst the countries who signed the CBC MCAA.

The CBC MCAA will enable consistent and swift implementation of new transfer pricing reporting standards developed under Action 13 of the BEPS Action Plan. It will ensure that tax administrations obtain a complete understanding of the way MNEs structure their operations, while also ensuring that the confidentiality of such information is safeguarded. First exchanges will start in 2017 on 2016 information. In case information fails to be exchanged, the Action 13 report on transfer pricing documentation provides for alternative filing so that there is a level playing field.

Those 31 countries are: Australia, Austria, Belgium, Chile, Costa Rica, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Malaysia, Mexico, Netherlands, Nigeria, Norway, Poland, Portugal, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland and United Kingdom.

China has entered into a separate MCAA, also based on the Multilateral Convention, to facilitate the automatic exchange of tax information under the OECD's Common Reporting Standard (CRS) framework (CRS MCAA). You may click [here](#) to access the details.

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

Relevant industries: All
 Relevant companies:
 Companies have overseas remittances
 Relevant taxes: CIT/VAT/BT

Potential impacts on businesses:

- Compliance risks due to regulatory uncertainties reduced

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

The State Tax Bureau (STB) of Tianjin Economic and Technological Development Zone (ETDZ) reminded on tax risks of overseas remittance

Recently, the STB of Tianjin ETDZ reminded on tax risks of overseas remittance. The reminder included the definition of withholding agent of non-resident enterprises, withholding time of the withholding agent, tax payment period and the legal responsibility of non-withholding, etc.

Besides, the reminder summarized the revenue recognition time of non-resident enterprises' common businesses, compared the new and the old non-resident enterprise CIT returns and made instructions on filling the returns.

Taxpayers of other areas can also refer to the tips in the reminder to arrange their own overseas remittance issues.

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

Relevant industries: All
Relevant companies:
Companies have or plan to
do cross-border investments
between China and US
Relevant taxes: N/A

Potential impacts on
businesses:

- Investment restrictions
maybe increased or
decreased

You may click [here](#) to access
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The 24th round of negotiation on China-US investment agreement held in Beijing

Based on a recent news published on the website of the Ministry of Commerce, the 24th round of negotiation on China-US investment agreement was held in Beijing from 18 Jan to 27 Jan 2016. The negotiation focused on the respective negative list of both countries. Next step, China and US will be committed to implement the consensus that reached in last September by the leaders of both countries to achieve a high-level, mutual benefit and win-win investment agreement.



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