



### 1. PRC VAT Reform Expansion – Notice of Overall Pilot Execution of Transforming Business Tax into VAT (Caishui [2016] No. 26)

中国增值税扩张 - 关于全面推开营业税改征增值税试点的通知(财税[2016]36号)

On March 23, 2016, the State Administration of Taxation (the Tax Bureau) and Ministry of Finance released the *Notice of Overall Pilot Execution of Transforming Business Tax Into Value Added Tax* (Caishui [2016] No. 26) (the Notice). The Notice became effective May 1, 2016.

Two significant types of turnover tax that China implements are value added tax (VAT) and business tax. VAT applies to taxpayers of domestic sales of goods, provision of processing and repairing services, and importing goods, and is generally calculated as (current output tax – current input tax) \* applicable VAT rate. Business tax applies to taxpayers of provision of services (excluding processing and repairing), transfer of intangible assets and sales of real property, and is calculated as sales amount \* business tax rate.

In order to lower the tax burden on companies and individuals, the Tax Bureau transformed business tax into VAT in the railway transport industry and postal industry in late 2013 and has been promoting VAT over business tax in other industries. Before release of the Notice, the industries that still applied business tax were the construction industry, real estate industry, financial industry, and personal care service industry. The Tax Bureau now seeks to implement overall transformation of business tax into VAT by releasing the Notice.

The Notice implements a nationwide pilot program, pursuant to which taxpayers engaged in sales of services, intangible assets, or real property in China are subject to VAT rather than business tax. Specifically, all taxpayers of business tax engaged in the construction industry, real estate industry, financial industry, and personal care service industry shall be included in the scope of the pilot program to pay VAT instead of business tax.

The transformation of business tax into VAT is expected to eliminate repetitive taxing in the supply chain. It is a significant benchmark in the development of circulation tax in China.

- Notice of Overall Pilot Execution of Transforming Business Tax into VAT (Caishui [2016] No. 26)
- 《关于全面推开营业税改征增值税试点的通知》(财税[2016]36号)
- Issuing authority: State Administration of Taxation and Ministry of Finance
- Date of issuance: March 23, 2016/ Effective Date: May 1, 2016

## 2. New Regulations Issued on National Social Security Fund

### 国务院发布全国社会保障基金条例

On March 10, 2016, the State Council released *Regulations on National Social Security Fund* (the Regulations). The Regulations will become effective May 1, 2016.

#### Source and Purpose of NSSF

According to the Regulations, the State will set up a National Social Security Fund (the NSSF). The NSSF will be composed of allocations from the central budget, transferred state-owned capital, returns on fund investments, and funds raised via other ways approved by the State Council. The NSSF will serve as the national social security reserve fund and will be used to supplement and adjust social security spending such as endowment insurance benefits during the peak period of the aging of population.

#### Management and Operation of NSSF

The State Council determines the fundraising and use schemes for the NSSF. The National Council of Social Security Fund (SSF) will manage and operate the NSSF. The SSF may invest in the NSSF by entrustment or other methods approved by the State Council. Qualified professional investment management institutions and custody institutions shall be selected as investment managers and custodians of the NSSF respectively, and shall follow the principles of publicity, fairness, and equity.

#### Difference Between NSSF and Social Insurance Fund

The NSSF and the social insurance fund are two different funds. NSSF is the State reserve fund, as described above, and it is planned for secured, profitable, and long-term investment. The social insurance fund is designed for providing material assistance for citizens in the event of elderliness, sickness, work-related injury, unemployment, and pregnancy. It has higher risk, thus the investment scope is more limited compared to NSSF.

- Regulations on National Social Security Fund
- 《全国社会保障基金条例》
- Issuing authority: State Council
- Date of issuance: March 10, 2016/ Public Comment Deadline: May 1, 2016

### 3. New Tax Policies on Cross-Border E-Commerce

#### 关于跨境电子商务零售进口税收政策的通知

On March 24, 2016, the State Administration of Taxation, Ministry of Finance, and General Administration of Customs (the GAC) released the Circular on Tax Policy for Cross-Border E-Commerce Retail Imports (the Circular). The Circular became effective April 8, 2016.

The GAC has been levying import tax on the entry of personal items by post; if the amount of the tax is less than RMB50, it is exempted. However, the Circular implements a new tax policy for cross-border "Business to Customer" (B2C) e-commerce. Under the Circular, imported retail commodities shall be levied tariff, subject to import value-added tax (VAT), and sales tax. Personal belongings not imported through cross-border e-commerce or where there is no electronic information of the transaction, payment, and logistics are not subject to the new tax policy. Key contents of the new tax policy are summarized as follows:

- > Taxpayer: Individuals purchasing any imported goods through cross-border e-commerce.
  - > Taxable Price: the actual transaction price.
  - > Tax Withholding Agent: E-commerce companies and companies specialized in e-commerce transaction platforms or logistic enterprises.
  - > Transaction Limit: The single transaction limit for an individual is RMB 2,000, and annual transaction limit for an individual is RMB 20,000. For imported commodities within the foregoing transaction limits, the tariff shall be fixed at 0 percent temporarily, the exemption for import VAT and consumption tax shall be canceled, and the commodities shall temporarily be levied at 70 percent of the statutory tax. For a single transaction that exceeds the single transaction limits or exceeds the cumulative annual limit, or a single indivisible commodity with duty-paid value exceeding RMB2,000, the commodity shall be levied tax in full as usual.
- Circular on Tax Policy for Cross-Border E-Commerce Retail Imports  
《关于跨境电子商务零售进口税收政策的通知》
  - Issuing authority: State Administration of Taxation, Ministry of Finance, and General Administration of Customs
  - Date of issuance: March 24, 2016/ Public Comment Deadline: April 8, 2016

### 4. China Promulgated the Charity Law

#### 全国人民代表大会通过《中华人民共和国慈善法》

On March 16, 2016, The Charity Law of the People's Republic of China (the Charity Law) was adopted at the fourth Session of the 12th National People's Congress. The Charity Law will enter into effect Sept. 1, 2016. As the first state-level law governing charities and charitable activities in China, the Charity Law reflects the Chinese government's intentions of creating a unified and clear legal framework for all charitable undertakings.

### Formation of Charities

Before the Charity Law was released, there had been no consolidated legislation which specifically applied to the formation of charities. Anybody seeking to establish a charity was first required to get approval from the authority which was entitled to regulate its business. Only after such approval was granted could the formation of a charity be subsequently registered with the local civil affairs department.

In accordance with the Charity Law, charities should be set up as a foundation, social group, or social service agency. However, the Charity Law abolishes the “two-step administrative track” for charities and stipulates that applications for establishing charities shall be directly made to the local civil affairs departments at county level or above. The local civil affairs departments shall make a decision within 30 days upon receipt of such applications. Therefore, the founders of charities are no longer required to obtain approval from other governmental agencies apart from the local civil affairs department.

### Transparency

In the past decade, the willingness of Chinese citizens to make charitable donations has been undermined by the perceived lack of transparency of charitable organizations. The Charity Law addresses this issue by setting aside a specific chapter concerning information disclosure requirements for charities. Such chapter stipulates that charities must make their constitutional documents as well as information on their decision-making, execution, and supervising members available to the public. All charities are required to disclose their annual work reports and annual financial reports to the public.

For charities qualified to raise funds from the public, their financial statements are required to be audited. Such charities are also required to regularly disclose information about their fundraising activities and the progress of their charitable projects. Where the period for a public fundraising activity exceeds six months, the charity shall publish an interim report available for public inspection once every three months. Additionally, the charity shall publish a full report on the fundraising in its entirety for public inspection within three months after the end of the project.

### Individual Fundraising

The third important point to note is that individuals (*i.e.*, natural persons) are prohibited from directly carrying out public fundraising activities. Under the Charity Law, any individual seeking to solicit donation from the public shall collaborate with a qualified charitable organization and have the charitable organization carry out fundraising activities and manage the raised funds. The penalty for breaching this restriction includes a fine of RMB 20,000 to RMB 200,000, and returning the raised funds to the donors or confiscation of the raised funds where a return is not feasible.

- Charity Law of the People’s Republic of China
- 《中华人民共和国慈善法》
- Issuing authority: Standing Committee of the NPC
- Date of issuance: March 16, 2016

## 5. Draft of the Revised Administrative Measures for Internet Domain Names Released for Public Commenting

工业和信息化部就《互联网域名管理办法（修订征求意见稿）》公开征求意见

On March 25, 2016, the Ministry of Industry and Information Technology (MIIT) released draft revisions to the Administrative Measures for Internet Domain Names for public commenting. The draft revisions reflect the regulatory body's strategies for coping with the rapid changes occurring on the internet as well as MIIT's intention to foster a more sustainable development of the domain name market.

### Validity Term of Licenses

The draft revisions stipulate for the first time that licenses for entities establishing domain name root servers, institutions operating domain name root servers, domain name registries, and domain name registrars shall be valid for five years. Applications for renewing the license shall be made to the authorities that issued the license within 90 days before expiration of the 5-year term.

### Responsibilities of Domain Name Registrar

In practice, domain name registries play a significant role in the domain name market as they deal with a wide range of end users of registered sub-domain names. The draft revisions therefore stipulate that domain name registries and domain name registrars must protect the personal information of users and shall not disclose such information to others without the prior approval of users unless otherwise required by law. In addition, the domain name registrars shall ask applicants to present true, accurate, and complete identification information, and both the domain name registries and the domain name registrars shall verify such information.

According to the draft revisions, if domain name registrars engage domain name registration agents in the sales and marketing of domain names, the domain name registrars must manage and supervise the work of the agents. The agents are required to disclose to applicants the relationship between the domain name registrars and themselves and include the name of the domain name registrars in the domain name registration service contracts to be signed with the applicants.

### A Controversial Clause

The draft revisions include a clause stating that internet access service providers shall not provide internet access service to domain names with servers which are located in China but not under the management of Chinese domain name registrars. This clause is controversial because media reports have interpreted this as meaning that websites not registered with a Chinese regulatory body will be blocked in China. On March 30, 2016, MIIT unofficially responded that this clause is intended to prevent domestic

registered domain names from using overseas domain name registrars and it responded that accessing overseas websites from China would not be affected. It remains to be seen whether this clause will be amended or deleted in the final version of the Administrative Measures for Internet Domain Names, and how MIIT might implement this clause.

- Draft Revisions to the Administrative Measures for Internet Domain Names
- 《互联网域名管理办法（修订征求意见稿）》
- Issuing authority: Ministry of Industry and Information Technology
- Date of issuance: March 25, 2016

## 6. Good Clinical Practice for Medical Device Trials Issued

国家食品药品监督管理总局、国家卫生和计划生育委员会发布《医疗器械临床试验质量管理规范》

Due to the rising demand for innovative health care in China, medical device manufacturers have been incentivized to develop creative new products. For certain categories of medical devices, clinical trial is an essential step needed to be taken before such medical devices are permitted to be sold on the market. In 2014, the State Council released the revised Regulations on the Supervision and Administration on Medical Devices, which mentions that clinical trials of medical devices shall follow good practice requirements separately formulated by regulatory bodies. On March 1, 2016, the China Food and Drug Administration and National Health and Family Planning Commission jointly issued the Good Clinical Practice for Medical Device Trial (the Norms), which is in response to the previously mentioned 2014 legislation.

The Norms primarily focus on the following aspects:

- (i) Preparation before conducting clinical trial;
  - (ii) Protection of human subjects, especially the human subjects' right to know and consent,
  - (iii) Formulation of clinical trial plans;
  - (iv) Responsibilities of the ethics committee, which is an independent committee being authorized to approve applications for clinical trial of medical devices as well as any variations of the approved clinical trial plans;
  - (v) Responsibilities of the applicants (*i.e.*, medical device manufacturers);
  - (vi) Responsibilities of the clinical trial institutions and researchers who are responsible for operating the clinical trial;
  - (vii) Record keeping and reports; and
  - (viii) Management of trial medical devices and basic documentation.
- Good Clinical Practice for Medical Device Trials
  - 《医疗器械临床试验质量管理规范》
  - Issuing authority: China Food and Drug Administration, National Health and Family Planning Commission
  - Date of issuance: March 1, 2016



## 7. The 13th Five-Year Plan on National Economic and Social Development Released

### 中华人民共和国国民经济和社会发展第十三个五年规划纲要发布

On March 17, 2016, Xinhua News Agency was authorized to release the 13<sup>th</sup> Five-Year Plan on National Economic and Social Development (the Plan) adopted by the National People's Congress (the NPC). The Plan serves as a blueprint of goals and directions for the country's social, economic, and political development for the upcoming five years. The Plan emphasizes five principles: innovation, coordination, going green, openness, and sharing.

In addition to addressing similar topics in the 12<sup>th</sup> Five-Year Plan with updated goals, the Plan shifts certain focuses and proposes new strategies, as summarized below:

- > It prioritizes innovation, setting innovation as the driving force for development, including innovations in science and technology and the development of a system that promotes and supports such innovations. Specifically, the Plan encourages public entrepreneurship.
- > It emphasizes healthy dynamics between the government and the market in order to develop a new economic system. New goals include building a “modern property rights system” and improving the “modern market system,” which aims to reduce government intervention on pricing and promote fair competition.
- > It raises the new topic of the cyber economy, promoting the development of cloud computing and the Internet of Things, and encouraging the application of the internet in various industries including medical care and education. The Plan also highlights the prospect of big data in governmental and industrial use.
- > It proposes improvement of infrastructure construction, including improving the transportation system, building a modern energy system, and strengthening water safety.
- > It pays special attention to poverty problems with dedicated projects aiming to improve overall employment, public services, education, transportation, environment, and finance situations.
- > It emphasizes “the rule of law,” highlighting the importance of the Constitution, setting a goal to build a government that rules by law with checks and balances, as well as promoting judicial justice, and educating society about the law.
- > It strives to build a social governance system, including a social credit system, a public security system, and a national security system. The social credit system involves the collection, documentation, and publication of individual and corporate information, based on which a reward and punishment system will be built. The national security system focuses on protecting key industries, finance, and cross-border capital.

- The 13th Five-Year Plan on National Economic and Social Development of the People's Republic of China
- 《中华人民共和国国民经济和社会发展第十三个五年规划纲要》
- Issuing Authority: The National People's Congress of the People's Republic of China
- Date of issuance: March 17, 2016

## 8. The Supreme People's Court and Supreme People's Procuratorate Releases New Judicial Interpretation on Bribery Cases

### 最高人民法院、最高人民检察院发布关于办理贪污贿赂刑事案件适用法律若干问题的解释

On April 18, 2016, the Supreme People's Court and the Supreme People's Procuratorate jointly issued the Interpretation of Several Issues Concerning the Application of Law in Handling Criminal Cases Related to Graft and Bribery (the Interpretations). Issued with immediate effect, the Interpretations: (i) expand the definition of bribery to include various intangible benefits; (ii) providing that bribes may arise after a benefit is conferred; and (iii) establish monetary thresholds and standards for bribery prosecution, including raising the thresholds for bribes involving government officials and nongovernment officials.

#### Expanding the Definition of Bribes

Under the PRC Criminal Law, the giving of "money and property" to government officials or to business partners in exchange for improper benefits is illegal. The Interpretations define "money and property" to include money, material objects, and also "property-like interests (财产性利益)." Further, the Interpretations provide that property-like interests are interests which have monetary values which can be calculated, such as home renovations and debt relief, and other interests which are acquired using money, such as membership services and travel. Property-like interests may also include offering free services to a government official by a provider or conferring benefits to the official through third parties.

#### Bribes May Arise After a Benefit is Conferred

The Interpretations provide that a government official accepting money or property after an improper benefit is sought or received still constitutes bribery. As a result, a showing of gratitude to an official for their help by giving a gift may result in bribery.

#### Monetary Thresholds and Standards for Bribery Prosecutions

Depending on the nature of the bribe and related factors, the minimum threshold for most prosecutions for offering bribes has been raised from RMB5,000 to RMB30,000. In addition, the Interpretations redefine the legal threshold for "relatively large amount" as ranging from RMB200,000 to RMB3,000,000, and amounts over RMB3,000,000 as "extremely huge."

Despite the change in threshold amounts, the Interpretations caution that those engaged in lower level corruption will still be punished.

- Interpretation of Several Issues Concerning the Application of Law in Handling Criminal Cases Related to Graft and Bribery
- 《最高人民法院、最高人民检察院关于办理贪污贿赂刑事案件适用法律若干问题的解释》
- Issuing Authority: Supreme People's Court and the Supreme People's Procuratorate
- Date of issuance: April 18, 2016



## 9. Opinions Sought on Simplification of Outbound Investment Approval Measures

### 国家发展改革委关于修订《境外投资项目核准和备案管理办法》的决定 (征求意见稿)

On April 13, 2016, the National Development and Reform Commission of People's Republic of China (NDRC) issued the NDRC Decision on Revising the Administrative Measures for Approval and Record Filing of Outbound Investment Projects (Draft for Comments) (the Draft), soliciting consultation and opinions from the public with regard to the Draft.

According to NDRC, it received positive feedback from the public during the consultation period of April 13, 2016, to May 13, 2016. The NDRC also stated in its notice issued on May 19, 2016, that it may further revise the Draft to optimize certain parts of it, for instance the procedure, definition, and risk control.

Below are the key changes proposed by the Draft:

#### > The State Council's Approval Sensitive Country, Region or Industry No Longer Required

According to the current Administrative Measures for Approval and Record Filing of Outbound Investment Projects, which came into effect May 8, 2014, and was amended on Dec. 27, 2014, (the Measures), outbound investment projects in a sensitive country, region, or a sensitive industry are subject to government approval. Accordingly, outbound investment projects with an investment amount of USD 2 billion or more are subject to final approval by the State Council, after preliminary review by the NDRC.

The Draft proposes to eliminate the State Council's role in the approval process for outbound investment projects involving sensitive countries, regions, or sensitive industries in its entirety, and as a result, the NDRC's approval alone for outbound investment projects would be sufficient, regardless of the investment amount.

The Draft did not propose any changes to the definition of a sensitive country, region, or sensitive industry. "Sensitive countries and regions" includes countries/regions that do not have diplomatic relations with China, or are subject to international sanctions, or are experiencing war or civil strife. "Sensitive industries" includes basic telecommunication service, development and exploitation of cross-border water resources, large scale land development, power, and news/media, to name just a few.

#### > Simplified Review Mechanism

Under the current regime, investors are required to provide the NDRC with an initial project report for outbound acquisitions or bidding projects with an investment amount of USD 300 million or more prior to commencing any substantive work. The NDRC will review the report and issue a confirmation letter if the project is considered in line with China's outbound investment policies. Commencing substantive work without having received the confirmation letter is a violation of the Measures, and the investor may be subject to administrative penalties as a result.

The Draft proposes to eliminate NDRC's review, and envisions that the NDRC will issue a receipt letter, instead of a confirmation letter.

The Draft did not propose any changes to the definition of substantive work. “Substantive Work” includes signing binding agreements, making a binding offer, filing applications to government in foreign countries or regions for approval in acquisition projects, and making a formal tender in bidding projects.

> Provincial NDRC Will No Longer Review Prior to Submitting to National NDRC

Pursuant to the Measures, for outbound investment projects that are subject to the NDRC’s approval, local enterprises, as opposed to centrally administrated state owned enterprises, must first submit their application to the provincial branch of the NDRC for review. The provincial branch of the NDRC shall review the applications and prepare an opinion for the national NDRC’s consideration before forwarding the application to the national NDRC for approval.

The Draft proposes that the provincial branch of the NDRC shall forward the application to the national NDRC directly, and is no longer required to produce any opinion with regard to the application.

In addition to the above, financing letters issued by a bank is not required when applying for NDRC’s approval.

The key changes described above indicate the Chinese government’s clear intention to relax and simplify the approval and record filing procedure for outbound investments projects and to lessen government interference in the market. If adopted, the Draft will provide investors with more certainty, both in time and in substance, when completing an oversea investment, and will provide transparency in the approval procedure, which will likely result in more Chinese enterprises participating in outbound investment projects in the long run.

- NDRC Decision on Revising the Administrative Measures for Approval and Record Filing of Outbound Investment Projects (Draft for Comments)
- 国家发展改革委关于修订《境外投资项目核准和备案管理办法》的决定(征求意见稿)
- Issuing Authority: the National Development and Reform Commission
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