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## Legal

### Provisions on Promoting and Regulating Cross-Border Data Flow

Issued by: The Cyberspace Administration of China  
Issue No.: The Order of The Cyberspace Administration of China No.16  
Issue Date: March 22, 2024  
Links: [https://www.cac.gov.cn/2024-03/22/c\\_1712776611775634.htm](https://www.cac.gov.cn/2024-03/22/c_1712776611775634.htm)  
[https://www.cac.gov.cn/2024-03/22/c\\_1712783131692707.htm](https://www.cac.gov.cn/2024-03/22/c_1712783131692707.htm)

Personal Information Protection Law, Measures for Security Assessment of Data Export, and other laws and regulations, stipulate the regulatory requirements and applicable data export protection measures for enterprises to export data. These measures include data export security assessment, filing of standard contract clauses (SCC), or certification for personal information protection. This new Provisions have refined the requirements for data export supervision, relaxed the conditions for cross-border data flow, and relatively narrowed the scope of data export security assessment. The main contents are outlined as follows:

#### **1. Clarify the precondition for security assessment on exporting important data**

- Data processors are not required to apply for security assessments on exported data that has not been notified or publicly released by relevant departments or regions as important data.

#### **2. Relax the standards for security assessment and filing of SCC for exporting personal information**

- Data export security assessment shall apply when the data processor exports personal information of more than 1 million individuals or sensitive personal information of more than 10,000 individuals as from January 1<sup>st</sup> of the year.
- SCC or certification for personal information protection shall apply when the data processor exports personal information of more than 100,000 but less than 1 million individuals, or sensitive personal information of less than 10,000 individuals as from January 1<sup>st</sup> of the year.

#### **3. Exempt for specific scenarios**

The following scenarios are exempt from data export security assessment, filing of SCC, or certification for personal information protection:

- Exporting personal information to conclude and fulfill a contract to which the individual is a party, such as cross-border shopping, cross-border payments, air and hotel reservations, visa processing, etc;
- Exporting personal information of employees as necessary for human resources management;
- In emergencies to protect the life, health, and property safety of natural persons, it is necessary to provide personal information overseas;
- Non-critical information infrastructure operators (CIIO) who export personal information (excluding sensitive personal information) of fewer than 100,000 individuals as from January 1<sup>st</sup> of the year.

#### 4. Emphasize the obligation to protect personal information

- Regardless of whether there is an exemption from data export protection measures, enterprises, as personal information processors, should fulfill their obligations to protect personal information. For the export of personal information, it's necessary to notify the individuals, obtain consent from the concerned individuals, and conduct an impact assessment on personal information protection.

### **Notice on Strengthening Joint Supervision on Equity Changes in Enterprises Involving Industrial Land Use in the City (Trial)**

Issued by: Shanghai Municipal Commission of Planning and Natural Resources  
Shanghai Administration for Market Regulation  
Shanghai Municipal Commission of Economy and Information

Issue No.: Huguihuaziyuanyong (2024) No. 51

Release Date: February 19, 2024

Effective Date: March 1, 2024

Links: Disclosure upon request

Based on the regulation of "Some Opinions on Strengthening the Management of the City's Stock Industrial Land" issued by the Shanghai Municipal Commission of Planning and Natural Resources (CPNR) in 2023, this Notice aims to enhance the government's supervision on the industrial land use and improve the management throughout its entire life cycle. The main contents are as follows:

- When a land-related enterprise undergoes a change in equity, such as equity transfer, capital increase or decrease in different proportions leading to changes in shareholders or capital contribution ratios, it is required to follow the following process: (a) submit an application to CPNR at the district level; (b) the district CPNR will issue an opinion after having a conference with various departments of the district government; (c) seek approval from the district government; (d) apply for registration of equity changes with the Administration for Market Regulation (AMR).
- CPNR will lead the development of an equity supervision system for land-related enterprises. This system will enable information sharing between CPNR, AMR, and other industrial departments, monitoring the equity status and changes of land-related enterprises.
- If the land-related enterprise completes the registration of equity change without consent from the government departments, it may face penalties such as restoring the original equity structure and bearing liability for breach of contract. Depending on the severity of the breach, the enterprise may also be classified as a credit-risk entity, leading to restrictions on government financial support, procurement, financing, and taxation.

## **Interim Regulations on Enterprise Information Disclosure (Revised in 2024)**

Issued by: the State Council  
Issue No.: Order No. 777 of the State Council  
Issue Date: March 10, 2024  
Effective Date: May 1, 2024  
Links: [https://www.gov.cn/zhengce/zhengceku/202403/content\\_6939591.htm](https://www.gov.cn/zhengce/zhengceku/202403/content_6939591.htm)

This amendment primarily enhances the supervision and management of, and liabilities for illegal acts in enterprise information disclosure. The main contents are as follows:

- AMR may take measures such as on-site inspections, reviewing vouchers & books, and checking bank accounts while investigating illegal acts.
- Enterprises that fail to file the annual reports or relevant information within the prescribed period shall be listed as Abnormal Operations and be subject to corresponding administrative penalties.
- The business license may be revoked if the enterprise still not take corrective measures after being listed as Abnormal Operations for not submitting the annual report for two consecutive years and cannot be contacted through the registered address or business premises.
- Enterprises that conceal the truth or provide false information in information disclosure shall be ordered to make corrections and be imposed a fine. In severe cases, the maximum fine can be up to RMB 200,000. Furthermore, the enterprise may be listed as a Seriously Illegal and Credit-risk Enterprises, and its business license may be revoked.

## **Measures to Deepen the Reform of Business Entity Registration and Administration and Optimize the Business Environment**

Issued by: Shanghai Administration for Market Regulation  
Issue No.: Hushijianzhuce (2024) No. 61  
Issue Date: February 23, 2024  
Links: <https://www.shui5.cn/article/8f/183407.html>

The Shanghai Administration for Market Regulation issued the “Measures to Deepen the Reform of Administration on Business Entity Registration and Optimize the Business Environment.” The main contents are as follows:

- Extend the validity period of real-name verification of natural persons and market entities from 10 days to 20 days.
- Establishing a standardized address registration information base. The registration authority no longer requests supporting documents, such as a lease agreement, or property certificate, for address registration upon verifying the applied address matches the information in the database.
- When the previous business entity has moved out but has not yet timely changed its registered address, the registration authority may register the same address as the domicile of a newly-entered business entity

upon proof of termination of the previous lease agreement issued by the property owner or its authorized representative.

- Exempt representative offices from submitting the legalized/apostilled certification of incorporation of their parent companies in annual reports.
- If the shareholders/investors have formed a valid resolution that meets the quorum, but the filing documents lack an official seal due to its destruction or loss, or for any other reasons, the registration authority may proceed with the registration or filing in accordance with the law upon receiving an explanation and commitment from the shareholders/investors.
- If a company has been listed as Seriously Illegal Enterprises for a full five years due to its failure to file annual reports or other reasons but has voluntarily rectified the issues, it can be automatically removed from such list without a formal application.

## Tax

### Interpretation of Several Issues Concerning the Application of Law in the Handling of Criminal Cases Involving Endangering Tax Collection and Administration

Issued by: the Supreme People's Court, the Supreme People's Procuratorate  
Issue No.: Fashi (2024) No. 4  
Issue Date: March 15, 2024  
Effective Date: March 20, 2024  
Links: <https://www.court.gov.cn/fabu/xiangqing/428482.html>

The interpretation clarifies the standards for conviction and sentencing in relation to crimes endangering tax administration, the understanding of relevant criminal charges, the application of law regarding new criminal methods, lenient punishment policies for those who make up unpaid taxes and recover tax losses, and the principles for punishing units involved in crimes harming tax administration. The key contents are outlined as follows:

- The interpretation clearly delineates specific circumstances where false tax declarations should be recognized as "deceptive and concealment tactics" as stipulated in the Criminal Law, which include: 1) The fabrication, alteration, transfer, concealment, or unauthorized destruction of accounting books, bookkeeping vouchers, or any other tax-related documents; 2) Entering into dual contracts; 3) Falsely listing expenses, offsetting fabricated VAT input, or falsely declaring special additional deductions; 4) Providing false materials to fraudulently obtain tax benefits; 5) Fabricating false taxable bases; 6) Adopting other deceptive or concealment tactics designed to evade or underpay taxes.
- The interpretation refined the recognition of "withheld and collected taxes" of withholding agents, namely, when a withholding agent commits to paying taxes on behalf of the taxpayer and subsequently disburses post-tax income to the taxpayer, such action shall be deemed as the withholding agent having "withheld and collected taxes."
- The interpretation clarifies the concepts of "a relatively large amount" and "an enormous amount" in the context of tax evasion crime in the Criminal Law, specifying that taxpayers who evade tax payment or

withholding agents who fail to pay or underpay tax already withheld or collected exceeding RMB 100,000 Yuan or exceeding RMB 500,000 Yuan, shall be deemed to have committed "tax evasion involving a relatively large amount" or "tax evasion involving an enormous amount," respectively.

- The interpretation establishes that administrative enforcement by tax authorities is a prerequisite procedure for prosecute criminal liability for tax evasion; namely, if a taxpayer engages in tax evasion behavior, without the tax authority having first legally issued a demand notice for the recovery of unpaid taxes, criminal liability will not be prosecuted according to the law.
- The provision specifies that, under the Criminal Law, the term "adopting measures to transfer or conceal assets" in the context of taxpayers avoiding tax collection by tax authorities includes the following actions: 1) Voluntarily waiving due debts; 2) Transferring assets without compensation; 3) Conducting transactions at obviously unreasonable prices; 4) Concealing assets; 5) Failing to fulfill tax obligations while detaching themselves from the supervision of tax authorities; 6) Using other means to transfer or conceal assets.
- The interpretation supplemented the specific scenarios of "fake export declaration or other deceitful means" in the crime of fraudulent export tax rebate.
- It is explicitly stated that if the purpose is not to defraud tax rebates, and no tax loss has been incurred due to false offsetting, such actions will not be identified as the crime of issuing false Special VAT invoices.
- The interpretation has clarified the definition of "issuing false Special VAT invoices or other invoices intended for the purpose of defrauding export tax rebates or offsetting tax payments" in the Criminal Law and has further elaborated on the specific circumstances constituting "a relatively large amount", "an enormous amount", "other serious circumstances" and "other especially serious circumstances".

## **Notice on the Pilot Preferential Policy on Stamp Duty for Offshore Trade in the Shanghai Free Trade Zone and Lingang New Area**

Issued by: Ministry of Finance, State Taxation Administration  
Issue No.: Caishui (2024) No.8  
Issue Date: February 6, 2024  
Links: <https://fgk.chinatax.gov.cn/zcfgk/c102416/c5221269/content.html>

The notice states that starting from April 1, 2024 until March 31, 2025, a pilot preferential policy on offshore trade stamp tax will be implemented in the China (Shanghai) Pilot Free Trade Zone and Lingang New Area, as detailed below:

- For enterprises registered in the China (Shanghai) Pilot Free Trade Zone and Lingang New Area engaged in offshore buy-sell intermediary trade business, the stamp duty on the purchase and sale contracts established for such businesses shall be exempted.
- The aforementioned offshore buy-sell intermediary trade refers to a transaction where a resident enterprise purchases goods from a non-resident enterprise and subsequently resells the same goods to another non-resident enterprise, with the goods never physically entering or exiting the customs territory of China throughout the entire process.

## Others

### Action Plan to Steadily Advance High-Level Opening-up and Further Enhance the Attraction and Utilization of Foreign Investment

Issued by: General Office of the State Council  
Issue No.: Guobanfa (2024) No.9  
Issue Date: February 28, 2024  
Links: [https://www.gov.cn/zhengce/zhengceku/202403/content\\_6940155.htm](https://www.gov.cn/zhengce/zhengceku/202403/content_6940155.htm)

The 'Action Plan to Steadily Advance High-Level Opening-up and Further Enhance the Attraction and Utilization of Foreign Investment' released this time outlines 24 measures, with its main contents summarized as follows:

- All restrictions on foreign investment entry into the manufacturing sector have been comprehensively lifted, and efforts to further expand opening-up continue in sectors such as telecommunications and healthcare.
- Support qualified foreign financial institutions to participate in domestic bond underwriting in accordance with relevant regulations.
- For projects invested in by domestically re-invested enterprises owned by foreign investors within China, if they meet the conditions listed in the catalogue of encouraged industries for foreign investment and other relevant criteria, they can enjoy import duty exemption policies for self-use equipment as stipulated.
- Support qualified foreign-invested enterprises to issue Renminbi (RMB) bonds domestically for financing and utilizing the fund for domestic investment projects.
- For managers and technicians of foreign-invested enterprises, as well as their accompanying spouses and minor children, the validity period of visa entry into China will be extended to two years.

## Recent Hot Topics

- Recently, when foreign-invested enterprises undergo registrations and filings with the local AMR across various regions, their foreign senior officers are typically required to present their original passports in person for the real-name verification. If a foreign senior officer is unable to attend in person, how can he/she complete such verification?
- Currently, the tax authority in the Waigaoqiao Free Trade Zone is conducting an investigation on the application of the Preferential Policy on Stamp Duty for Offshore Trading Turnover (Document of Caishui (2024) No. 8), how should enterprises prepare for this?
- Since the comprehensive implementation of digital electronic invoice reform, many enterprises have often found their total amount limit for issuing digital electronic invoices insufficient. How can they quickly increase this limit?

If you are interested in the above topics, please feel free to contact us:

### Jane Fan

Head of Legal Service Dept.

☎ 135-0177-7091

✉ [fanrong@seahonor.com](mailto:fanrong@seahonor.com)

### Lucy Huang

Head of Accounting & Tax Service Dept

☎ 137-6193-2188

✉ [huangyi@seahonor.com](mailto:huangyi@seahonor.com)

### Nikko Chen

Head of Japan Desk

☎ 186-2191-6721

✉ [chenhong@seahonor.com](mailto:chenhong@seahonor.com)

### Cynthia Su

Tax Service Contact

☎ 138-1853-0811

✉ [suxiaofang@seahonor.com](mailto:suxiaofang@seahonor.com)

### William Zhu

Audit Service Contact

☎ 139-1751-0923

✉ [zhuwei@seahonor.com](mailto:zhuwei@seahonor.com)

### Tiffany Tian

Accounting Service Contact

☎ 138-1609-0515

✉ [tianfang@seahonor.com](mailto:tianfang@seahonor.com)

### Minnie Gu

HR Service Contact

☎ 139-1713-2663

✉ [gumin@seahonor.com](mailto:gumin@seahonor.com)