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Tax

Management Measures for Advance Tax Rulings of the Shanghai Municipal Tax Service (Trial)

Issued by: Shanghai Municipal Tax Service of the State Administration of Taxation
Issue No.: Hu Shui Ban Fa [2023] No. 33
Effective Date: December 29, 2023
Links: <https://shanghai.chinatax.gov.cn/xwdt/ztl/zhl/yhysgj/gzbs/202312/t469664.html>

The Measures clarify the definition and application rules of Advance Tax Rulings (“ATRs”). Companies planning M&A or launching new business, if applicable, could enhance certainty on tax treatments, reduce tax risks, improve tax burden assessment and support business decision making through applying for ATRs. Detailed rules are summarized as below:

1. Applicable taxpayers

- Corporate taxpayers in Shanghai, not limited to large enterprise taxpayers;
- Individual taxpayers and corporate taxpayers out of Shanghai are currently ineligible.

2. ATRs do not apply to the following matters

- Matters without a pre-developed project plan or will not occur in the following two years;
- Matters without reasonable commercial purposes or explicitly prohibited by relevant national laws and regulations;
- Matters to which explicit provisions in the existing tax laws and regulations may directly apply;
- Other matters not applicable for ATRs.

3. Application documents

- An ATR Application Form;
- An ATR Acknowledgement Form;
- The relevant approval or ruling documents in case that the matter of application requires prior approval or ruling by relevant authorities;
- Relevant supporting documents such as contracts, agreements, meeting minutes, or feasibility study reports;
- Any other information required by the tax authorities.

Tax Policies Guidelines for Stabilizing Foreign Trade and Foreign Investment (2024)

Issued by: State Taxation Administration
Effective Date: January 16, 2024
Links: <https://fgk.chinatax.gov.cn/zcfgk/c100022/c5220505/content.html>

On the basis of Version 2022, the Guidelines sort out the currently effective tax support policies and tax administration service measures for stabilizing foreign trade and foreign investment with 51 items in total, consisting of two major parts, namely, polices to stabilize foreign trade and foreign investment:

1. Policies to stabilize foreign trade

- Tax policies for export of goods and services
- VAT policies for cross-border taxable activities
- Tax policies of new types of foreign trade such as cross-border e-commerce
- Facilitation measures for export tax refund (exemption) services

2. Policies to stabilize foreign investment

- Tax policies to encourage foreign investment such as temporarily deferring withholding tax on profits distributed to foreign investors used for direct investment
- Tax policies to attract foreign individuals such as preferential IIT policies for foreign individuals to enjoy non-taxable allowances
- Tax policies to support opening up financial markets such as VAT exemption policies for QFII and RQFII entrusting domestic companies to engage in securities trading business in China

The Decision on Revision of “Implementation Rules for Measures of the People's Republic of China on Administration of Invoices”

Issued by: State Taxation Administration
Issue No.: State Administration of Taxation Order No. 56
Release Date: January 15, 2024
Effective Date: March 1, 2024
Links: <https://fgk.chinatax.gov.cn/zcfgk/c100011/c5221006/content.html>

On 20 July 2023, the State Council released the newly revised “Measures of the People’s Republic of China on Administration of Invoice” and recently, State Taxation Administration has revised its supporting regulations “Implementation Rules for Measures of the People’s Republic of China on Administration of Invoices”. The revision mainly includes the following aspects:

- Clarify the definition of electronic tax invoices, emphasize that electronic tax invoices have the same legal effect as paper tax invoices and shall not be refused by any companies or individuals;
- According to the administration requirements of electronic tax invoices, add the “total invoicing amount”

method for acquiring electronic tax invoices which allows tax authorities to implement management on the upper limit of the total invoicing amount (excluding VAT) of taxpayers in a calendar month;

- Add the basic management regulations for issuing red-letter electronic tax invoices;
- Refine the terms about the falsification in the issuing of invoices and clarify specific situations that are not in conformity with the actual business operations, including: 1) Issuing or obtaining invoices without purchasing or selling goods, providing or receiving services, or engaging in other business activities; 2) The business activities such as purchases or sales of goods and provision or acceptance of services are real, but the contents of the invoices issued or obtained such as buyer name, seller name, product name or business item and amount are not in conformity with the actual situation.

Legal

Guidelines for Deregistration of Enterprise (2023 Revision)

Issued by: State Administration for Market Regulation (SAMR), General Administration of Customs (GAC), State Taxation Administration (STA)

Issue No.: No. 58 of 2023

Release Date: December 21, 2023

Links: https://www.gov.cn/zhengce/zhengceku/202312/content_6923455.htm

SAMR, GAC and STA jointly revised and announced the Guidelines for Deregistration of Enterprise based on its 2021 revision in accordance with the provisions of the PRC Company Law, the Regulation on the Administration of the Registration of Market Entities and other laws and regulations. The following changes are noteworthy:

- The new Guidelines provides solutions in the chapter of Guidelines for Handling Deregistration under Special Circumstances for special and complex cases that are difficult to deregister in practice, including: 1) the shareholder is out of contact or uncooperative in the process of deregistration; 2) the enterprise is unable to perform the liquidation on its own; 3) business license and official seal of the enterprise are lost, 4) shareholders (investors) have been deregistered or deceased; 5) the parent company of a branch has been deregistered; 5) the Legal Representative is declared missing, dead, or does not cooperate in the deregistration process; 6) business license of the enterprises has been revoked; and 7) other special cases.
- The new Guidelines clarifies the composition and number of liquidation team, on which different registration authorities had different understanding. However, this part will need to be revised with the implementation of the new Company Law.
- The new Guidelines adds contents on the deregistration of market entities in addition to companies such as partnership enterprises, individual proprietorship enterprises and non-corporate legal persons.

Pilot Measures for Qualified Foreign Limited Partnership in Shenzhen

Issued by: Shenzhen Financial Regulation and Administration Bureau
Issue No.: Shenjinjiangui (2024) No. 1
Release Date: January 5, 2024
Links: http://jr.sz.gov.cn/sjrb/xxgk/zcfg/djrzcd/jrfzcc/content/post_11089148.html

Replacing the "Pilot Measures for Foreign-Invested Equity Investment Enterprises in Shenzhen (Revised)" issued in 2021 (Shenjinjiangui (2021) No. 1), this new Measures mark a new chapter in the QFLP program in Shenzhen. The main revisions include:

- Based on the experience of previous pilot QFLP programs in the Qianhai Cooperation Zone, the policy of total-quota control on pilot funds is launched in Shenzhen, meaning that eligible pilot fund management enterprises are permitted to set up one or more pilot funds within the approved total-quota, and flexibly adjust the scale of a single pilot fund as well as allocate the total-quota among multiple pilot funds sponsored by them.
- Expanding the investment scope of the pilot funds. The newly added investment scope includes: 1) non-publicly issued or traded preferred shares or convertible bonds of listed companies that can be converted into ordinary shares, and 2) investment in non-performing assets. The new Measures also allow the pilot funds to operate in the form of a fund-of-funds (FOF) (including investing in the real estate private funds filed with AMAC).
- Facilitating the application process, adhering to the principle of "immediate application, immediate acceptance, and immediate review", adopting an "online + offline" joint review mechanism*1. In principle, the authorities should complete the review and approval process within 10 working days from the time the enterprise submits the required application materials to the designated platform of the Shenzhen Local Financial Regulation and Administration Bureau.

Note: The Joint review mechanism involves all component departments to review and grant the qualification of QFLP management enterprises and funds, with Shenzhen Financial Regulation and Administration Bureau being designated as the main contact department.

Foreign Exchange

Implementation Rules for the Pilot Programs of High-Level Opening-up of Cross-Border Trade and Investment

Issued by: State Administration of Foreign Exchange ("SAFE") Shanghai Branch, Guangdong Branch, Zhejiang Branch
Issue No.: Shanghaihuifa (2024) No. 3, Yuehuifa (2024) No.1, Zhewaiquan (2024) No.3
Links: <https://www.safe.gov.cn/shanghai/2024/0123/2068.html>
<https://www.safe.gov.cn/guangdong/2024/0119/2706.html>
<https://www.safe.gov.cn/zhejiang/2024/0126/1881.html>

As of January 31, 2024, SAFE Shanghai Branch, Guangdong Branch and Zhejiang Branch have respectively

issued the Implementation Rules for the Pilot Program of High-Level Opening-up of Cross-Border Trade and Investment. The implementation rules issued by the three SAFE branches are basically the same in content, except for slight differences in some wordings. The following points should be noted:

- High-Level Opening-up of Cross-Border Trade and Investment: It clarifies the qualification for the banks and enterprises which can apply for the facilitating measures for current accounts. Eligible banks should submit application materials and the list of qualified enterprises to the SAFE at the provincial level for filing. The facilitating measures can only be applied after the banks obtain the written filing document from the said SAFE.
- Delegating the Foreign Debt Registration to Banks: Non-financial enterprises can only apply for foreign debt signing (change) registration at the banks if they choose to borrow foreign debt under the Macro-Prudential Management mode (i.e. the foreign debt quota is calculated based on the value of the company's net assets). Registration of foreign debt borrowed under other modes (such as the model of Investment Gap, pilot program for facilitating cross-border financing, etc.) shall still be filed with the local SAFE

Entry-Exit

Measures for Further Facilitating the Entry of Expats into China

Issued by: National Immigration Administration

Effective Date: January 11, 2024

Links: <https://www.nia.gov.cn/n897453/c1624329/content.html>

The National Immigration Administration (NIA) issued five measures to facilitate the entry of expats into China, to further remove the blockages related to expats coming to China for business, study and tourism, of which the more important ones are as follows:

- The conditions for applying for visas at port of entry have been further lifted and extended to foreigners who urgently need to come to China for non-diplomatic and official activities, such as visiting and exchanging, investing and starting businesses, visiting relatives and dealing with private affairs.
- Foreigners in China who need to enter and exit the country for multiple times may apply in China with the Entry-Exit Administration Bureau to change their visas to multiple-entries.

Customs

Announcement on Optimizing the Classification of Supervision of Warehousing Goods in Comprehensive Bonded Zone by Status

Issued by: General Administration of Customs PRC

Issue No.: GACC Announcement [2023] No. 185

Release Date: December 20, 2023

Links: <http://gec.customs.gov.cn/customs/302249/zfxgk/zfxgkml34/5586261/index.html>

The announcement stipulates that enterprises implementing classified supervision of stored goods by status within the comprehensive bonded zone (“the Zone”) can carry out "direct transfer within the Zone" business if they meet the specified conditions, which is beneficial for significantly reducing logistics costs and improving customs clearance efficiency.

- For non-bonded goods that are subject to the classified supervision being changed to bonded status after declaration, or for bonded goods being changed to non-bonded status after completing customs procedures but are applied to continually be stored in the Zone under the classified supervision, the goods do not need to enter or exit the Customs Barrier. Enterprises can directly handle customs clearance procedures and complete "direct transfer within the Zone".
- Optimize the supervision workflow and allow enterprises to set up dedicated "inspection waiting areas" in their warehouses. Customs can implement on-site supervision of goods in the "inspection waiting areas", and no longer require enterprises to transport the goods to the designated supervision site in the Zone.

Recent Hot Topics

- Year 2024 is first significant time-point after the implementation of the "Six Year Rule" for individual income tax. As a foreigner, do you understand the provisions of tax obligations on global income?
- With the revision of the Implementation Rules for Invoice Management Measures, tax authorities have further strengthened their crackdown on accepting false value-added tax invoices. How to use digital system tools to improve efficiency and reduce risks in invoice management is an urgent issue that every enterprise needs to consider and solve.
- With the implementation of the new Company Law just around the corner, how the existing companies that have not yet paid up their registered capital adapt to the "five-year term" requirement?

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

Lucy Huang

Head of Accounting & Tax Service Dept

☎ 137-6193-2188

✉ huangyi@seahonor.com

Nikko Chen

Head of Japan Desk

☎ 186-2191-6721

✉ chenhong@seahonor.com

Cynthia Su

Tax Service Contact

☎ 138-1853-0811

✉ suxiaofang@seahonor.com

William Zhu

Audit Service Contact

☎ 139-1751-0923

✉ zhuwei@seahonor.com

Tiffany Tian

Accounting Service Contact

☎ 138-1609-0515

✉ tianfang@seahonor.com

Minnie Gu

HR Service Contact

☎ 139-1713-2663

✉ gumin@seahonor.com