



Contents

Legal

Anti-Money Laundering Law of the People's Republic of China (Draft Amendment)	1
Lingang New Area Releases General Data List	2
Implementation Opinions on the Joint Supervision of "Dual Random and One Public" in the Field of Market Supervision in Shanghai Municipality	3
The Measures for the Administration of Credit Restoration of Market Supervision and Administration (Consultation Paper)	3

Tax

Measures for Advance Tax Rulings by the Beijing Municipal Tax Bureau of the State Administration of Taxation (Trial)	4
Announcement of the Maoming Municipal Tax Bureau of the State Taxation Administration on the Implementing Advance Tax Rulings for Complicated Tax-Related Matters of Large Enterprises	5

Others

Notice on the Implementation of One-off Employment Subsidy for Key Groups in the Municipality	6
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Recent Hot Topics

If a company miss the deadline for annual report filing, what penalties might the company potentially face?	7
How should enterprises respond to the risk alerts triggered by the fact that their bank loans and long-aging receivables are pending at the same time?	7
What methods can be taken by enterprises to recover from a low tax credit rating?	7

Legal

Anti-Money Laundering Law of the People's Republic of China (Draft Amendment)

Issued by: The Standing Committee of the National People's Congress

Issue Date: April 26, 2024

Links: https://mp.weixin.qq.com/s?__biz=MzAwMTUwODQ1MA

This draft revises the 2006 version of Anti-Money Laundering Law of the People's Republic of China, consisting of 7 chapters and 62 articles. The key amendments are as follows:

1. Broaden the applicability of the law

The draft amendment extends the scope of application of the law to all forms of money laundering and related criminal activities (currently, only seven crimes are dealt with under the law), as well as terrorist financing, which significantly broadens the applicability of the law.

2. Expand subjects of anti-money-laundering obligations

The draft amendment expands the subject of anti-money laundering to include non-banking payment institutions and specific non-financial institutions (e.g. precious metal dealers, accounting firms, real estate intermediaries, etc.). Additionally, it underscores the obligations of all entities and individuals to collaborate with financial institutions in fulfilling due diligence requirements.

3. Strengthen anti-money-laundering obligations of financial institutions

The draft amendment formally replaces the term "customer identification" with "customer due diligence check", thereby reinforcing the anti-money laundering obligations of financial institutions. These enhanced obligations include establishment of a sound internal control system for anti-money laundering, thorough customer due diligence check, maintenance of customer identification information and transaction records, timely reporting of large transactions and suspicious transactions, among other measures.

4. Add self-registration of beneficiary owners

The draft amendment stipulates that legal persons and unincorporated organizations must maintain accurate beneficial owner information, submit and update it truthfully to the registration authority. Financial institutions and specific non-financial institutions, in fulfilling their anti-money laundering obligations, are relieved of the requirement to identify beneficial owners directly. Instead, they shall independently verify and confirm such information.

5. Other major changes

- Special preventive anti-money laundering measures: Any entity or individual should immediately take special preventive measures including halting transactions and restricting transfer of funds and assets against the listed objects and their related parties recognized by China as being involved in terrorism, targeted financial sanctions, or posing significant money laundering risks;
- Extra-territorial applications: Based on the principle of reciprocity, China's state organs may request overseas financial institutions to cooperate with investigations on money laundering and terrorist financing. Concurrently, Chinese financial institutions are required to report to the financial authorities of the State Council in a timely manner when they receive requests for international investigative

assistance;

- Enhanced penalties for illegal activities: Financial institutions in violations may face substantial fines, capped at RMB 10 million, or ranging from 50% to 200% of the transaction amount involved, or up to five times the direct economic losses incurred. For individual violations, the penalty has been escalated to a range of RMB 200,000 to 1 million. Additionally, financial institutions and their key personnel, including directors, supervisors, senior management, and those directly responsible, may face operational restrictions or prohibitions imposed by the relevant financial regulatory authorities.
- Exemptions for diligence and responsibility: Should directors, supervisors, senior management, or other directly responsible individuals within a financial institution demonstrate that they have taken diligent and responsible anti-money laundering measures, they may be exempt from penalties.

Lingang New Area Releases General Data List

Issued by: China (Shanghai) Pilot Free Trade Zone Lingang New Area Management Committee
Issue No.: Huzimaolinguanwei [2024] No. 50/51/52
Release Date: May 17, 2024
Links: <https://www.shanghai.gov.cn/nw4411/20240518/9ad0a4be255642f2a179c0f413bbd3c6.html>

On 17 May 2024, the Management Committee of Shanghai Pilot Free Trade Zone Lingang New Area released the first batch of general data lists for cross-border data scenarios, a first of its kind nationwide (referred to as the “List”).

- The List contains 3 industries: intelligent networked vehicles, public funds and biomedicine. It addresses 11 distinct scenarios, including multinational production and manufacturing for intelligent networked vehicles, clinical trials and research and development in pharmaceuticals, and information sharing within the fund market research sector, among others. The List is organized into 64 data categories and over 600 data fields.
- The List is applicable to data processors registered in the China (Shanghai) Pilot Free Trade Zone Lingang New Area, who are engaged in activities related to cross-border flow of data in the Lingang New Area. For data on the List, data processors may apply for registration with the Management Committee of the Lingang New Area. Upon meeting the relevant management requirements, such data can flow freely across borders, exempt from the necessity to undergo the 'three paths' of export security assessments, standard contractual clauses, or protection certifications.
- The current trial period for the List is set for one year. Subsequently, the Lingang New Area plans to release additional general data lists that encompass a broader range of fields. These include business such as the bank’s international trade finance guarantee, international trade settlement through letter of credit, reinsurance, shipping trade digitalization, among other scenarios.

Implementation Opinions on the Joint Supervision of "Dual Random and One Public" in the Field of Market Supervision in Shanghai Municipality

Issued by: Shanghai Municipal People's Government
Issue No.: Hufuban No.6
Issue Date: April 29, 2024
Effective Date: July 1, 2024
Links: <https://www.shanghai.gov.cn/gwk/search/content/05bc4af926704dd4bef4588e06a10f21>

The main content of the implementation opinion is as follows:

- 'Dual Random, One Public' refers to the process in market supervision where inspection targets are randomly selected, inspectors are randomly assigned, and the results of the spot checks and any subsequent actions are promptly disclosed to the public. 'Dual Random, One Public' as the fundamental approach to market supervision, is conducted by the Administration for Market Regulation in conjunction with other relevant departments, focusing on safety, quality, public interest, and general regulatory areas, organizing at least one random inspection or joint inspection each year.
- Entities with superior credit ratings may have their inspection ratios and frequencies reasonably decreased. Conversely, for those with legal credit infractions and elevated risk profiles, the inspection ratios and frequencies will be suitably escalated. The results of the spot checks will be disclosed to the public through the public announcement system and other platforms within 20 working days from the date of formation.

The Measures for the Administration of Credit Restoration of Market Supervision and Administration (Consultation Paper)

Issued by: State Administration for Market Regulation
Issue Date: May 11, 2024
Links: https://www.samr.gov.cn/xyjgs/flfg/art/2024/art_17a0b9fad1a149f0a79746b2282258e2.html

This Measures, based on the "The Measures for the Administration of Credit Restoration of Market Supervision and Administration" (No. 3 [2021] of the State Administration for Market Regulation), has updated some provisions on the credit restoration of business entities. The main changes are as follows:

1. Expanding the scope of credit restoration

The Measures has expanded the scope of credit restoration to include the removal records from the abnormal business list, voluntarily disclosed administrative penalty information, and negative information related to spot checks and inspection results.

2. Reduction in the duration of restoration

The public announcement period for most administrative penalty information is shortened from six months to three months before the entity can apply for ceasing the public display.

3. Reduction in processing time

The processing time for credit restoration from the list of seriously illegal and dishonest entities and administrative penalty information is reduced from 15 working days to 5 working days.

Tax

Measures for Advance Tax Rulings by the Beijing Municipal Tax Bureau of the State Administration of Taxation (Trial)

Issued by: Office of Beijing Municipal Taxation Bureau, State Administration of Taxation
Issue No.: Jingshuibanfa [2024] No. 8
Issue Date: April 8, 2024
Links: <http://beijing.chinatax.gov.cn/bjswj/sszc/zxwj/202405/58a543c23f1b4b85b6b15f83be850199.shtml>

In order to continuously optimize the business environment of the capital and enhance the level of tax policy certainty services, the Office of the Beijing Municipal Taxation Bureau of the State Administration of Taxation has formulated the following Advance Tax Rulings (“ATR”) measures:

1. Object of application

Corporate taxpayers within Beijing.

2. Applicable matters

Specific complicated and significant tax-related matters that are expected to occur in the future.

3. Inapplicable matters

1) Matters for which there is no definite establishment plan or which will not occur in the near future (within 24 months); 2) Matters for which there is no reasonable business purpose or which are expressly prohibited by relevant national laws and regulations; 3) Matters for which there are clear provisions in the current tax policy and the relevant provisions can be directly applied, as well as matters for which there are no provisions in the current tax policy and for which tax legislation is required; 4) Matters which are identical in character to the transactional affairs of the applicant which were accomplished in the previous years, and the transaction matters of such previous years are in the process of communication with the tax authorities, and there is no conclusion on the tax treatment; and 5) Other matters that are not applicable to the ATR.

4. Receiving authority

Large enterprises in Beijing apply to the First Taxation Sub-bureau of Beijing Municipal Taxation Bureau of the State Administration of Taxation; other taxpayers submit application materials to the tax service office of the competent tax authority.

5. The Measures shall be applied from the date of issuance.

Announcement of the Maoming Municipal Tax Bureau of the State Taxation Administration on the Implementing Advance Tax Rulings for Complicated Tax-Related Matters of Large Enterprises

Issued by: Maoming Taxation Bureau of Guangdong Province
Issue Date: April 24, 2024
Links: <https://guangdong.chinatax.gov.cn/gdsw.shtml>

In order to further optimize the tax business environment, the Tax Bureau of Maoming City of Guangdong Province has implemented the Advance Tax Rulings (“ATR”) for Complex Tax-Related Matters of Large Enterprises, which is described as follows :

1. Object of application

Large enterprises in Maoming City, including: 1) member enterprises of the Thousand Group of the State Administration of Taxation; 2) enterprises listed by the Guangdong Provincial Taxation Bureau of the State Administration of Taxation and the Maoming Municipal Taxation Bureau; 3) member enterprises of the municipal state-owned enterprise groups and enterprises listed on the Stock Exchange of Hong Kong Limited; 4) municipal key tax source enterprises and key types of enterprises of concern in Maoming City; and 5) other enterprises that need to be included in the key services and management.

2. Applicable matters

Large enterprises in Maoming City determine the legal business activities and transaction arrangements that are about to take place, including: 1) tax-related matters involving significant changes in internal organizational structure and business model; 2) tax-related matters involving equity transfers and equity incentives; 3) tax-related matters involving significant investment and financing activities; 4) tax-related matters involving policy relocation; 5) tax-related matters involving cross-border investment; and 6) other significant and complex tax-related matters that may arise.

3. Inapplicable matters

(1) Tax-related matters that have already occurred to the taxpayer; (2) Matters that are not stipulated in the existing tax laws, regulations, rules or normative documents and require tax legislation, or purely theoretical issues; (3) Matters for which there is no definite plan or which will not occur in the near future; (4) Matters for which there is no reasonable commercial purpose or which are prohibited by relevant national laws and regulations; (5) Matters involving interpretation of foreign laws; (6) Matters outside the scope of the functional authority of tax authorities; (7) Other matters that are not subject to prior ruling on taxation. (6) Matters outside the scope of the functional authority of the tax authorities; (7) Other matters to which prior tax rulings are not applicable.

4. Receiving authority

The First Taxation Branch of the Maoming Municipal Taxation Bureau.

Others

Notice on the Implementation of One-off Employment Subsidy for Key Groups in the Municipality

Issued by: Shanghai Municipal Bureau of Human Resources and Social Security, Shanghai Municipal Bureau of Finance, Shanghai Municipal Education Commission
Issue No.: Hurenshegui (2024) No. 7
Issue Date: April 23, 2024
Links: https://rsj.sh.gov.cn/tjypx_17728/20240506/t0035_1423925.html

The Notice makes clear provisions on the government subsidies that enterprises in Shanghai can enjoy for employing college graduates, the unemployed and other key groups, the main contents of which are as follows:

- Scope of subsidy objects: From January 1, 2024 to December 31, 2024, enterprises, social organizations and individual industrial and commercial households in Shanghai that have employed 2024 college graduates, unemployed college graduates within 2 years after graduation, people registered as unemployed for more than 3 months, and unemployed youth aged 16-24, and have signed a labor contract of one year or more, and have paid social insurance premiums as stipulated.
- The subsidy rate is 2,000 yuan per person, and the same college graduate or unemployed person can only enjoy the subsidy once.

Recent Hot Topics

- June 30, 2024, marks the deadline for filing the annual report for FY2023. Has your company completed its annual report? If not, what adverse effects might this delay have on the company's day-to-day operations and what penalties might the company potentially face?
- Long-term bank loans and long-aging receivables from shareholders existing simultaneously may trigger risk alerts in the tax authority's system. What should the enterprise do if it receives a notice for self-inspection regarding this issue from tax authority?
- What methods can be taken by enterprises to recover from a low tax credit rating?

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