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Tax

The Value-Added Tax Law of the People's Republic of China

Issued by: Standing Committee of the National People's Congress
Issue No.: The Value-Added Tax Law of the People's Republic of China
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The following outlines the main changes in the Value-Added Tax Law ("VAT Law") compared to the Implementation Rules of the Interim Regulations on Value Added Tax and Circular CaiShui [2016] No. 36:

1. Narrowing the scope of "Deemed Sales"

- The transfer of goods across counties (cities) will no longer be treated as "deemed sales";
- Some items previously classified as "deemed sales" are not explicitly listed under the "deemed taxable transactions" in the VAT Law, including: 1) consignment sales; 2) using self-produced or commissioned processed goods for non-VAT taxable projects; 3) distributing self-produced, commissioned processed, or purchased goods to shareholders or investors; and 4) providing services free of charge to other entities or individuals. Whether these transactions will no longer be treated as "deemed sales" remains to be clarified by new implementation regulations and related laws.

2. The VAT Law only mentions that small-scale taxpayers can apply the simplified tax calculation method (with a collection rate of 3%)

- Circular CaiShui [2016] No. 36 specified scenarios under which general taxpayers could choose the simplified tax calculation method, but the VAT Law only mentions that small-scale taxpayers can use the simplified tax calculation method;
- The VAT Law unifies the collection rate for the simplified tax calculation method at 3%, without mentioning the 5% collection rate scenarios under Circular CaiShui [2016] No. 36 (such as the sale of self-built real-estate projects which were built before 1st May 2016, leasing of real-estate projects which were built before 1st May 2016, and labor dispatch services subject to differential taxation), nor does it include a catch-all provision. The subsequent tax treatment for transactions that were previously subject to a 5% collection rate will need to be further clarified by new implementing regulations and related laws.

3. Possibility of input VAT deduction for catering, entertainment, and daily residential services; Input VAT for loan services may also be deductible

- The VAT Law stipulates that input tax on catering services, daily residential services, and entertainment services can not be deductible when "directly used for consumption". This differs from Circular CaiShui [2016] No. 36, which explicitly listed the purchase of these three services as ineligible for input tax deduction;
- The VAT Law no longer includes loan services among the circumstances where input tax cannot be credited against output tax.

4. No direct Mention of Differential Taxation Scenarios

- Circular CaiShui [2016] No. 36 listed projects that could calculate sales based on a differential basis,

including: 1) transfer of financial products; 2) brokerage agency services; 3) financial leasing and financing after-sales repurchase; 4) air transport passenger station services; 5) tourism services; 6) construction services subject to the simplified tax calculation method; and 7) sales of developed real estate projects. However, the VAT Law does not mention these situations.

5. Reduced Options in Tax Payment Period

- The VAT Law has eliminated tax payment periods of 1 day, 3 days, and 5 days, and now only includes 10 days, 15 days, one month, or one quarter.

Announcement on Matters Concerning Property Tax Relief for Corporate Taxpayers in Difficulty

Issued by: Shanghai Municipal Finance Bureau, State Taxation Administration Shanghai Tax Bureau

Issue No.: Hucaifa [2024] No. 10

Release Date: December 20, 2024

Effective Date: January 1, 2024

Links: <http://shanghai.chinatax.gov.cn/zcfw/zcfqk/dcs/202412/t474651.html>

According to the Interim Regulations on the Property Tax of the People's Republic of China, if taxpayers genuinely face financial difficulties in paying taxes, the people's governments of provinces, autonomous regions, and municipalities can determine to periodically reduce or exempt property tax. Based on this, Shanghai Municipal Finance Bureau and the Tax Bureau have issued this announcement (“the Announcement”), specifying the regulations for property tax relief for taxpayers in financial difficulty. The following key points should be noted:

1. The applicable subjects are corporate taxpayers paying property tax in Shanghai, excluding individual taxpayers;
2. The Announcement specifies six scenarios under which taxpayers can apply for a reduction or exemption of property tax, such as: entering bankruptcy proceedings with idle properties; suffering significant losses due to natural disasters or other force majeure factors; and engaging in encouraged industries listed in the National “Catalogue for Guiding Industrial Restructuring” while incurring losses. However, the Announcement does not specify the amount or proportion of property tax that can be reduced;
3. The Announcement has taken effect since January 1, 2024. If taxpayers encountered the situations listed in the Announcement in 2024 and meet the criteria, they can apply for a refund of the property tax already paid for that year.

Legal

The Implementation Measures for Administration of Company Registration

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Links: <https://www.samr.gov.cn/zw/zfxxgk/fdzdgknr/fgs/art/2024/art.html>

The Implementation Measures address a variety of widely-concerned issues in company registration. The following key points are particularly noteworthy:

- Shareholders may contribute capital in the form of data and network virtual property in accordance with the provisions of the law;
- It is clarified that for existing companies, a subscribed capital contribution period of more than 30 years or a registered capital of more than RMB one billion is considered a significant abnormality in capital contribution. The registration authority may require the company to make timely adjustments in accordance with the law;
- It is reaffirmed that a limited liability company shall, within 20 working days from the date of information generation, publicize information such as the amount of subscribed and paid-in capital, the method of capital contribution, and the date of capital contribution of shareholders through the National Enterprise Credit Information Publicity System;
- Efforts are made to break the deadlock in company deregistration. Specifically, if a company is unable to proceed with the deregistration procedures due to the death, deregistration, or revocation of the shareholder, the legal successor of the shareholder's equity or all the investors of the shareholder may legally act on behalf of the shareholder to complete the deregistration process.

Reply on the Non-Retroactive Application of Paragraph 1 of Article 88 of the Company Law of the People's Republic of China

Issued by: Supreme People's Court
Issue No.: Fashi No. 15 [2024]
Release Date: December 24, 2024
Effective Date: December 24, 2024
Links: <https://www.court.gov.cn/zixun/xiangqing/450831.html>

- Background of the Reply:

On June 29, 2024, the Supreme People's Court issued the Several Provisions on the Temporal Validity of the Application of the Company Law of the People's Republic of China (the "Judicial Interpretation") , stipulating that prior to the implementation of the new Company Law, for civil disputes arising from the legal fact that the assignor transferred equity rights where the prescribed contribution period yet expired and the assignee failed to make such capital contribution in full and on time, the provisions of the first

paragraph of Article 88 of the new Company Law shall apply. That is to say, the assignor shall bear supplementary liability for the capital contribution that the assignee fails to pay on time. After the issuance of this judicial interpretation, it triggered disputes in public opinion regarding "the law shall not be retroactive";

On December 22, 2024, the Legal Affairs Committee of the National People's Congress proposed in its 2024 review report that the provisions of the first paragraph of Article 88 of the new Company Law should not have retroactive effect. The Legal Affairs Committee also stated that it would urge the relevant judicial interpretation formulation authorities to take appropriate measures to properly address this issue. The Reply issued by the Supreme People's Court is a timely response to the above-mentioned review opinions of the Legislative Affairs Committee;

- The Reply clarifies that the first paragraph of Article 88 of the new Company Law is applicable only to equity transfers where the capital contribution period has not expired and such transfers occur after July 1, 2024. It does not have retroactive effect on disputes over investment liability that arose before July 1, 2024;
- The Reply shall take effect immediately from December 24, 2024.

Human Resources

Notice on Improving the Integration of Foreigner's Work Permit and Social Security Card

Issued by: Ministry of Human Resources and Social Security
Issue No.: Renshebufa No.75 (2024)
Release Date: October 27, 2024
Effective Date: December 1, 2024
Links: https://www.gov.cn/zhengce/zhengceku/202412/content_6991296.htm

The main contents of the Notice include the following:

- Since December 1, 2024, the Foreigner's Work Permit and the Social Security Card (the "SSC") will be integrated. Foreigners will no longer need to apply for a physical Foreigner's Work Permit;
- After entering China, foreigners can download the e-SSC APP on their mobile phones. They can register and log in using their name and other information. Once their identity is verified, they can obtain an e-SSC that includes work permit information;
- The e-SSC loaded with work permit information can be used for the residence permit application and social insurance registration of foreigners;
- For those who have already obtained a physical Foreigner's Work Permit, the principle of "no change, no replacement" will be applied. When the existing work permit is due for extension or amendment, the new procedure for the integration of the work permit and SSC will be followed.

Decision on the Amendment to the Interim Measures for Foreigners Employed in China to Participate in Social Insurance

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Effective Date: December 23, 2024
Links: https://www.mohrss.gov.cn/xxgk2020/fdzdgknr/zcfg/xgfzjd/202412/t20241226_533334.html
https://www.mohrss.gov.cn/xxgk2020/gzk/gz/202112/t20211228_431615.html

The Ministry of Human Resources and Social Security has recently amended the Interim Measures for Foreigners Employed in China to Participate in Social Insurance. The amendment reiterates the obligation of foreigners to participate in social insurance while working in China. The following points are noteworthy:

- Employers who hire foreign nationals are obligated to complete the social insurance registration for these individuals within 30 days of obtaining their work permits;
- Foreigners who are employed by an overseas employer and dispatched to work at a branch or representative office in China shall also participate in social insurance as required by law. Both the domestic entity and the individual shall pay the social insurance as stipulated;
- Foreign individuals employed in China who are nationals of countries that have entered into bilateral or multilateral social security agreements with China (for example, Japan, South Korea, Germany, etc.) may be exempted from certain social insurance payment obligations, in accordance with the terms of the respective agreements;
- The Social Insurance Administration Department is responsible for supervising and inspecting the participation of foreigners in social insurance. Employers who do not legally pay social insurance premiums for their foreign employees will be subject to penalties in accordance with the Social Insurance Law and other relevant regulations.

The Interim Measures for Implementation of Flexible Retirement System

Issued by: Ministry of Human Resources and Social Security, Organization Department of the Central Committee of the Communist Party of China, Ministry of Finance
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Effective Date: January 1, 2025
Links: https://www.gov.cn/zhengce/zhengceku/202501/content_6995747.htm

Based on the previously issued "Measures for the Gradual Deferral of Statutory Retirement Age" by the State Council, this Interim Measures further clarifies the flexible retirement policy. The main contents are as follows:

- Flexible Early Retirement: Employees who have met the minimum social insurance contribution period are eligible to apply for a flexible early retirement with a maximum of three years. After applying for early retirement, the retirement age shall not be lower than the original statutory retirement age of 50 years old for female workers, 55 years old for female employees in management and technical positions, and 60 years old for male employees. Employees who apply for flexible early retirement must inform

their employer in writing at least three months before their intended retirement date;

- Flexible Deferred Retirement: Under mutual agreement between the employee and the employer, employees can apply for deferred retirement, with the deferral period not exceeding three years from the statutory retirement age. During the period of flexible deferred retirement, the employment relationship between the employer and the employee continues, and both parties should timely and fully pay social insurance premiums.

Recent Hot Topics

- The Value Added Tax Law was officially passed on December 25, 2024. Compared with the current Implementation Rules of the Interim Regulations on Value Added Tax and the Circular CaiShui [2016] No. 36, what are the primary changes and what implication will it have on enterprises?
- In December 2024, the Ministry of Human Resources and Society Security revised the Interim Measures for Foreigners Employed in China to Participate in Social Insurance, and merged the foreigners' work permit with the social security card. What implications will this development bring to enterprises' employment of foreigners and foreigners working in China?
- Will various financial subsidies and funding support for foreign-invested enterprises continue to exist across the country as we enter 2025? What key time points should enterprises be aware of when applying for financial subsidies for 2024? What preparations can be made in advance?

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