

China New and Important Regulations (July 2012 Edition)

1. 关于支持深圳前海深港现代服务业合作区开发开放有关政策的批反复（国函[2012]第58号）

Notice regarding certain policies for promoting the development of Qianhai Shenzhen-Hong Kong Modern Service Industry Co-operation Zone in Shenzhen (Guohan (2012) No. 58)

Announced and Effective on 27th June, 2012
2012年6月27日公布及生效

主要内容:

Main contents:

1.1 税收政策

Tax policies

- 1.1.1 产业准入目录及优惠目录分订由发展改革及财政部会同有关部门制定。前海符合条件的企业减按15%的税率征收企业所得税。

The catalogue of industries admission in Qianhai and the relevant preferential tax treatments shall be stipulated by the National Development and Reform Commission ("NDRC"), the Ministry of Finance and other relevant authorities. Qualifying enterprises shall be subject to a reduced corporate income tax rate of 15%.

- 1.1.2 对在前海工作、符合前海规划产业发展需要的境外高端人才和紧缺人才，取得的暂由深圳市人民政府按内地与境外个人所得税负差额给予的补贴，免征个人所得税。

Qualifying overseas high-end and urgent needed personnel in Qianhai shall enjoy individual income tax ("IIT") benefits for a subsidy obtained from the Shenzhen government to cover any additional tax burden that the taxpayer needs to bear while working in Qianhai, and such subsidy is not subject to IIT.

- 1.1.3 注册在前海的符合规定条件的现代物流企业享受现行试点物流企业按差额征收营业税的政策。

Qualifying modern logistic enterprises registered in Qianhai shall be subject to a business tax netting mechanism applicable to pilot logistic enterprises.

- 1.2 其它请见 http://www.gov.cn/zwgk/2012-07/03/content_2175825.htm

For others, please visit http://www.gov.cn/zwgk/2012-07/03/content_2175825.htm

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2. 关于认定税收协定中“受益所有人”的公告 (国家税务总局公告 2012 年第 30 号)

Notice regarding the determination of the term “beneficial owner” in tax treaties (SAT Announcement (2012) No. 30)

Announced and Effective at 29th Jun, 2012

2012 年 6 月 29 日公布及生效

主要内容:

Main contents:

公告公布前, 国家税务总局公布国税函[2009] 第 601 号文, 明确了非居民就其取得的来源于中国的股息、利息及特许使用费所得申请享受税收协议待遇时税务机关判定其受益所有人身份应考虑的因素, 旨在防止滥用税收协议优惠待遇。国家税务总局公布 30 号文以更明确 601 号文的内容如下:

Before this announcement, the SAT issued a circular, namely, Guoshuihan (2009) No. 601 (“Circular 601”), to determine the beneficial owner status of the recipient of the corresponding passive income, such as dividend income, interest income and royalty income, etc., and eradicate any inappropriate treaty shopping behaviors. In order to provide further clarifications on the Circular 601, the SAT issued an implementation to cover the following points:

- 充分的商业目的并不足以在受益所有人身份认定中做出肯定的判断。同时, 公告也强调应综合考虑 601 号文所列 7 项不利于受益所有人身份认定的因素, 税务机关不应仅仅因为某项因素存在而做出否定的判断。

Sound commercial purpose may not be good enough for beneficial owner assessment, and that seven negative factors stated in the Circular 601 shall be collectively considered by the tax authorities.

- 关于上市公司及其认可的子公司的受益所有人认定“同一国家豁免条款”。

Same country exception for listed companies and their qualifying subsidiaries is now offered.

- 申请人通过代理人的, 无论代理人是否属于缔约对方居民, 都不应据此影响对申请人受益所有人身份的认定, 但代理人应向税务机关声明其本身不具有受益所有人身份。

If an applicant receives the passive income through an agent (or a designated person), the tax residency of the agent shall not affect the applicant’s beneficial owner status, but as the same time the agent shall file a declaration to the tax authority that it is not a beneficial owner.

- 明确了判定受益所有人所需的数据, 包括公司章程、公司财务报表、资金流向纪录、董事会议纪录、董事决议、人力和物存配备情况、相关费用支出、职能和风险承担情况、贷款合同、特许权使用合同或转让合同、专利注册、证书、版权所属证明, 以及代理合同或指定收款合同等。

Supporting documents for determining a beneficial owner includes articles of association, financial statements, cash flow statements, directors’ minutes and resolutions, personnel and material resources allocation statement, expenses summary, function and risk analysis, loan agreement, royalty agreement, patent and copyright registration certificate, agency agreement or designated payment agreement.

- 若税务机关不能在规定期限内(根据国税函[2009]124 号文的规定期为 40 个工作日)做出决定

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的，可以做出暂不享受税收协议待遇的处理。经过审批后可以享受税收协议待遇的，税务机关应将相应税款退还申请人。

The local tax authorities are now allowed temporarily to disregard an applicant's treaty benefit application if tax officials cannot draw conclusion within 40 business days as specified in the Guoshuihan (2009) No. 124), but if beneficial owner status is confirmed afterward, tax overpaid can be refunded.

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3. 关于交通运输业和部分现代服务业营业税改征增值税试点若干税收政策的补充通知（财税[2012]第53号）

Supplementary notice regarding certain tax policies related to value added tax (“VAT”) pilot arrangements for the transportation industry and certain modern industries (Caishui (2012) No. 53)

Announced on 29th June, 2012

2012年6月29日公布

Effective at 1st January, 2012 (Except below 3.4)

2012年1月1日生效（除了以下3.4）

主要内容：

Main contents:

- 3.1 未与中国政府达成双边运输免税安排的国家和地区的单位或者个人，向境内单位或者个人提供的国际运输服务，符合《交通运输业和部分现代服务业营业税改征增值税试点实施办法》第六条规定的，试点期间扣缴义务人暂按3%的征收率代扣代缴增值税。

For enterprises or individuals of jurisdictions that have not entered into Agreements for the Avoidance of Double Taxation (“DTAs”) related to international transportation income, their withholding agents are responsible for withholding VAT at 3% for their provision of international transportation services to domestic enterprises or individuals that meet the requirements of that prescribed in the Article 6 of Caishui (2011) No. 111 regarding the VAT pilot arrangements.

- 3.2 被动漫企业认定管理办法(试行)认定为一般纳税人的动漫企业，自试点开始实施之日起至2012年12月31日，可以选择适用简易计税方法计算缴纳增值税(3%)。一经选择，在2012年内不得变更计税方法。此次调整，意味着试点地区动漫企业营业税改征增值税后，原先在营业税上享有的优惠政策将予以保留和转换，即改按3%的征收率征收增值税。

VAT general taxpayers who have been recognized as animation and comics enterprises according to the Administrative Measures on Animation and Comics Enterprise Recognition (Trail) may choose to be subject to VAT on a simplified calculation method for service income derived from various services related to development of animation and comics related products and transfer of copyright within China at 3%. Once the calculation method is elected, it cannot be changed within 2012. The simplified calculation method may reduce tax burden as well as to retain the original business tax rate of 3%, that the animation and comics enterprises are originally subject to, to collect VAT.

- 3.3 船舶代理服务统一按照港口码头服务缴纳增值税。此前试点地区船舶运输企业按提供运输服务和代理服务不同，分别执行11%和6%的税率，但在实际操作中出现无法依不同税率开具发票问题。为更好完善该领域税收政策，此次调整将船舶代理企业与货物代理企业的税收政策等同，即同样执行6%的增值税税率。

Shipping agency enterprise unified VAT tax rate of 6%. Prior to the VAT Pilot Arrangements, shipping enterprises provided provision of port services and agency

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services, are subject to different VAT rates at 11% and 6% respectively, and in practice, these enterprises are hard to issue invoices according to different tax rates. In order to better improve the tax policies, this supplementary notice supersedes the former tax treatment and stipulates that both shipping agency service and the freight shall be subject to VAT as port services, which means only 6% VAT rate is applicable.

- 3.4 自 2012 年 7 月 1 日起，试点纳税人中的一般纳税人，以试点实施之前购进或者自制的有形动产为标的物提供的经营租赁服务，在试点期间可以选择适用简易计税方法计算缴纳增值税。

From 1st July, 2012, VAT general taxpayers under the VAT Pilot Arrangement who provide operating lease services with tangible assets acquired or self-manufactured before the enforcement of VAT Pilot Arrangements may choose to be subject to VAT on a simplified calculation method during the VAT Pilot Arrangements.

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4. 关于企业所得税核定征收有关问题的公告（国家税务总局公告 [2012] 第 27 号）
Notice regarding certain issues related to the collection of Corporate Income Tax ("CIT") on the deemed basis (SAT Announcement (2012) No. 27)

Announced on 29th June, 2012
2012 年 6 月 29 日公布

Effective at 1st Jan, 2012
2012 年 1 月 1 日生效

主要内容:

Main contents:

- 4.1 专门从事股权（股票）投资业务的企业，不得核定征收企业所得税。
An enterprise that is specialising in equity (stock) investment shall not be subject to CIT on the deemed basis.
- 4.2 按核定应税所得率方式核定征收企业所得税的企业，取得的转让股权（股票）收入等转让财产收入，应全额计入应税收入额，按照主营业务（业务）确定适用的应税所得率计算征税。若主营业务（业务）发生变化，应在当年汇算清缴时，按照变化后的主营业务（业务）重新确定适用的应税所得率计算征税。
For an enterprise that is subject to CIT on the deemed basis at the deemed profit rate, its income derived from share transfer shall be fully included in the taxable income and shall adopt the applicable deemed profit rate determined according to its major business. Where the major business of the enterprise has changed during the year, the income derived from share transfer shall be recalculated according to the new deemed profit rate determined according to the new major business.

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5. 温家宝主持召开国务院常务会议决定扩大营业税改征增值税试点范围

Premier WEN Jiabao chaired an executive meeting of the State Council decided to expand the scopes of the VAT Pilot Arrangements

Announced on 25th July, 2012

2012 年 7 月 25 日公布

Effective at 1st August, 2012

2012 年 8 月 1 日生效

主要内容:

Main contents:

自 2012 年 8 月 1 日起至年底，将交通运输业和部分现代服务业营业税改征增值税试点范围，由上海市分批扩大至北京、天津、江苏、浙江、安徽、福建、湖北、广东和厦门、深圳 10 个省（直辖市、计划单列市）。明年继续扩大试点地区，并选择部分行业在全国范围试点。

From 1st August, 2012 to 31st December, 2012, the scopes of VAT Pilot Arrangements for the transportation industry and certain modern industries shall expand from Shanghai to Beijing, Tianjin, Jiangsu, Zhejiang, Anhui, Fujian, Hubei, Guangdong, Xiamen and Shenzhen. For 2013, the scopes shall continue to expand to other cities and other industries.