



BDO China Shu Lun Pan Certified Public Accountants LLP
Lixin Certified Tax Agents Co., Ltd

China Tax Newsletter

September 2016

Our tax newsletter for this month covers:

1. Announcement on Collection and Administration of Income Tax Relating to Equity Incentives and Capital Contributions in the Form of Technology 1
2. Announcement on Improving the Administration of Advance Pricing Arrangements 2
3. Announcement on Implementation of the Pilot Scheme of Granting the VAT General Taxpayer Status to Enterprises Located in Customs Special Supervision Areas..... 2
4. Notice on Tax Policies Relating to Administrative Settlement Amounts 3
5. Announcement on Issues Relating to Urban Land Use Tax 4

1. Announcement on Collection and Administration of Income Tax Relating to Equity Incentives and Capital Contributions in the Form of Technology

Main contents of the Announcement are as follows:

(1) Individual Income Tax

1) The average number of employee of the recent 6 months equals to the average number of employees listed under “Salaries and Wages” for detailed declaration for full IIT withholding of all staff during the 6 months prior to the month when the stock (equity) options are excised, restricted shares become tradeable, or equity is awarded.

2) Where an equity incentive plan is no longer qualified for deferred tax payment, related tax shall be paid before the 15th day of the month following the month when the circumstance of the plan changes.

3) Determination of fair market price. For a listed company, the fair market price of shares equals to the closing price of the day when the shares are obtained, or the closing price of the previous trading day if the shares are obtained on a non-trading day. For a non-listed company, the fair market price is determined based on the net assets method, analogy method, or any other reasonable method. The net assets method determines the fair market price based on the net assets at the end of the year prior to the acquisition of stocks (equity).

4) Equity incentives obtained by employees are applicable to different tax policies depending on whether the equity incentives meet the conditions for deferred tax payment. Equity obtained by an employee from the employer for multiple times during a tax year which are traded under fair market price and are not qualified for deferred tax payment shall be taxed according to article 7 of Guo Shui Han [2006] No. 902.

5) Filing requirements on enterprises. The Announcement specifies the time and information list for filing by enterprises. Where a non-listed company grants equity incentives eligible for deferred tax payment, a listed company grants equity incentives, or an individual contributes capital in the form of technology, the taxpayer eligible for the preferential tax treatments are not required to complete related filing, only the enterprise grants the equity option or the invested company is required to complete the filing.

6) Information list for filing of the equity transfer. When declaring tax for share (equity) transfer eligible for deferred tax payment, the withholding agent and the individual are required to submit information that can prove the transfer price of the share (equity), original value of the share (equity) eligible for deferred tax payment, and reasonableness of the tax amounts, including the transfer agreement, valuation report and related negotiable instruments. Where information is incomplete or insufficient for judgement without justified reasons, the competent tax authorities may assess and determine the tax bases pursuant to the tax collection and administration law if the declared tax bases are low.

(2) Enterprise Income Tax

1) Resident enterprises implementing tax assessment based on examination of accounts are eligible for the deferred tax payment for capital contributions in the form of technology.

2) The Announcement includes the Filing Form for Deferred Payment of Enterprise Income Tax on Capital Contributions in the Form of Technology which shall be submitted by the enterprise for the first enterprise income tax filing after the completion of a capital contribution. The form aims to confirm the taxable income eligible for deferred tax payment for the capital contribution in the form of technology. The Announcement

emphasizes that the competent tax authorities have the right to adjust the value of a technology achievement should it be valued at an obviously unreasonable price.

The Announcement shall come into force on 1 September 2016.

2. Announcement on Improving the Administration of Advance Pricing Arrangements

The Announcement refines the administration of advanced pricing arrangements as specified in Chapter 6 of Guo Shui Fa [2009] No. 2, further standardises the negotiation and execution process of advanced pricing arrangements, and implements the Action Plan on Base Erosion and Profit Shifting (BEPS) in which China has a profound involvement. The Announcement features the following changes:

(1) An advanced pricing arrangement shall normally go through six stages, including preparatory meetings, intension for negotiation and execution, examination and evaluation, formal application, negotiation and execution, and monitored performance. Compared to the original 6 stages, the stage of intension for negotiation and execution is added, the stages of negotiation and execution arrangement are combined as the stage of negotiation and execution, and the sequence of the stages are adjusted.

(2) Except for those that should be accepted and handled by the State Administration of Taxation, advanced pricing arrangements should be accepted and handled by the competent tax authorities responsible for special tax adjustment investigations.

(3) Pursuant to the original regulations, advanced pricing arrangements shall come into effect from the second year following the submission of formal written application by an enterprise. It is now adjusted to the tax year when the Notice on Tax Issues is released by the competent tax authorities to the enterprise for acceptance of the intension of negotiation and execution.

(4) The Announcement adds clauses allowing tax authorities to reject intension of negotiation and execution submitted by enterprises, prioritize the acceptance of formal applications and reject formal applications, and optimizes the processes relating to examination and evaluation and monitored performance.

(5) The Announcement adds the clause on unilateral information exchange of advanced pricing arrangements.

Tips from BDO China

According to the minimum standard of the BEPS project, China commits to include the unilateral advanced pricing arrangements signed after 1 April 2016 to the compulsory spontaneous information exchange frame, exchange information regularly with related countries (regions) and advise the status to the taxpayers.

The Announcement shall come into force on 1 December 2016 and Chapter 6 of Guo Shui Fa [2009] No. 2 is repealed simultaneously.

3. Announcement on Implementation of the Pilot Scheme of Granting the VAT General Taxpayer Status to Enterprises Located in Customs Special Supervision Areas

To facilitate the participation of enterprises located in customs special supervision areas in domestic market competitions, the Announcement launches the pilot scheme of granting VAT general taxpayer status to enterprises located in Kunshan Comprehensive Bonded Area, Suzhou Industrial Park Comprehensive Bonded Area, Shanghai Songjiang Export Processing Zone, Henan Zhengzhou Export Processing Zone, Zhengzhou Xinzheng Comprehensive Bonded Area, Chongqing Xiyong Comprehensive Bonded Area, and

Shenzhen Yantian Comprehensive Bonded Area. Main tax policies of the pilot scheme are as follows:

- (1) VAT general taxpayer status is granted to pilot enterprises located in the abovementioned areas. Pilot enterprises are allowed to issue special VAT invoices for domestic sale of goods (including those sold to other pilot enterprises located in the customs special supervision areas), and declare and pay VAT and consumption tax pursuant to related regulations.
- (2) Pilot enterprises are allowed to obtain special VAT invoices for goods purchased outside the areas. If the goods are for domestic sales, the invoices can be used for input VAT deduction; if the goods are for export, the invoices can be used for export tax refund; pilot enterprises are subject to the current tax policies for goods purchased outside the areas under the processing trade mode.
- (3) Goods imported by pilot enterprises are still applicable to the bonded policies. Where domestic sale of bonded goods is involved or unprocessed bonded goods are sold to areas outside the supervision areas, the pilot enterprises shall declare and pay import duty, VAT and consumption tax on the bonded goods as well as deferred tax payment interest to the customs based on the original state of the bonded goods when being transferred into the supervision areas. Purchase of goods by pilot enterprises from non-pilot enterprises in the supervision areas are subject to tax policies applicable to importation of goods. For trading of unprocessed bonded goods between enterprises located in the same supervision area, they are exempt from taxes and the buyer is still applicable to the bonded policies.
- (4) Pilot enterprises can apply for tax refund after the goods are physically exported. Goods sold by pilot enterprises to non-pilot enterprises in the supervision areas, except for those unprocessed bonded goods, are deemed exported in terms of tax refund.
- (5) The equipment imported by a pilot enterprise for self-use (including machinery equipment, capital construction materials and office supplies) can be temporarily exempted from import duty, import VAT and import consumption tax which shall be equally divided and allocated to each of the years when the equipment are under customs supervision. At the end of each year, the temporarily exempted import tax amounts of the year shall be divided according to ratio of domestic sales to export sales of the year. The tax amount in proportion to the export sales are applicable to the tax policies of the supervision area, while the tax amount in proportion to the domestic sales are subject to tax policies applicable to areas outside of the supervision area and therefore, supplementary tax payment shall be made accordingly.

This Announcement shall be implemented with effect from 1 November 2016.

4. Notice on Tax Policies Relating to Administrative Settlement Amounts

Cai Shui [2016] No. 100 promulgates tax policies relating to administrative settlement amounts in the field of securities and futures:

- (1) The administrative settlement amounts paid by the administrative counterpart shall not be deducted before income tax.
- (2) Administrative settlement amounts received by China Securities Investor Protection Fund Corporation Limited (hereinafter referred to as “Investor Protection Fund”) on behalf of investors, which would be paid to investors later, do not belong to the income of Investor Protection Fund and therefore, should not be subject to enterprise income tax. Investor Protection Fund shall use fiscal notes for receipt of administrative settlement amounts.
- (3) For the administrative settlement amount received from Investor Protection Fund, an

enterprise investor shall include the amount into the income of the current period for calculation of enterprise income tax; an individual will be temporarily exempt from individual income tax on the settlement amount received from the Investor Protection Fund.

The Notice shall come into force on 1 January 2016.

Tips from BDO China

Administrative settlement refers to the act of China Securities Regulatory Commission (CSRC) ending an investigation on citizen, legal person or other organizations (hereinafter referred to as “**administrative counterpart**”) for alleged breach of securities and futures laws, administrative laws and regulations, and related supervision regulations when the administrative settlement agreement, proposed by the counterpart and negotiated between the CSRC and the counterpart, has been reached to rectify the alleged unlawful acts, eliminate the negative effects caused by the alleged unlawful acts, compensate the loss of investors by payment of administrative settlement amount, etc.

5. Announcement on Issues Relating to Urban Land Use Tax

Announcement of Shenzhen Local Taxation Bureau [2016] No. 3 specifies the calculation of actual occupied area of a taxpayer for land use tax purpose, details are as follows:

For buildings with more than two floors, the taxpayer shall determine the actual occupied area in the following sequence for calculation of land use tax:

- (1) Area recorded in the land use right certificate, real estate certificate or related real estate ownership documents and contracts;
- (2) Construction area / plot ratio;
- (3) Construction area / total floors of the building (excluding underground floors).

The Announcement shall be implemented with effect from 1 November 2016 and remain effective for the subsequent five years.

This publication has been carefully prepared, but it has been written in general terms and should be seen as broad guidance only. The publication cannot be relied upon to cover specific situations and you should not act, or refrain from acting, upon the information contained therein without obtaining specific professional advice. Please contact BDO China Shu Lun Pan Certified Public Accountants LLP and Lixin Certified Tax Agents Co., Ltd to discuss these matters in the context of your particular circumstances. BDO China Shu Lun Pan Certified Public Accountants LLP and Lixin Certified Tax Agents Co., Ltd, its partners, employees and agents do not accept or assume any liability or duty of care for any loss arising from any action taken or not taken by anyone in reliance on the information in this publication or for any decision based on it. For more information or advice on the above subjects or other tax issues, please contact:

Jesse Wang

Tel: +86-755-82900993

E-mail: jesse.wang@bdo.com.cn | info@bdo.com.cn

Jason Hu

Tel: +86-755-82966512

E-mail: jason.hu@bdo.com.cn

BDO China Shu Lun Pan Certified Public Accountants LLP, a Chinese LLP, and Lixin Certified Tax Agents Co., Ltd, a Chinese LLC, are members of BDO International Limited, a UK company limited by guarantee, and forms part of the international BDO network of independent member firms.

BDO is the brand name for the BDO network and for each of the BDO Member Firms.