

China Business Advisory

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VAT Pilot Program to Expand

According to a Statement of its meeting presided over by Premier Wen Jiabao on 25 July 2012, the State Council approved a plan to extend a Value Added Tax (“VAT”) Pilot Program from Shanghai to 10 provinces and cities commencing from 1 August 2012.

Business Tax (“BT”) will be replaced by VAT for the Transportation Sector and certain modern service industries in Beijing, Tianjin, Jiangsu, Zhejiang, Anhui, Fujian, Hebei, Guangdong, Xiamen and Shenzhen.

Supplementary Notice on VAT Pilot Program

A new circular Caishui [2012] No. 53 was jointly issued by The Ministry of Finance and The State Administration of Taxation dated 29 June 2012. This is a supplementary notice, comprised primarily of the following, for the Pilot Program for the transformation of BT and VAT for Shanghai:

- The withholding agent in the pilot region is required to withhold VAT at the rate of 3% when remitting payments to an international transportation service provider overseas retrospectively from 1 January 2012 if the country where the international transportation service provider is based does not have tax exemption from any bilateral tax agreement or transportation treaty with China.
- Any company identified as an animation enterprise is allowed to select the relevant Simplified Tax Calculation Method to arrive at VAT from 1 January 2012 to 31 December 2012. However, it cannot be changed once it has been selected during the pilot period.

- The service income of all shipping agents shall be subject to VAT as port services retrospectively from 1 January 2012.
- A General VAT Tax Payer who derives operating lease income before the pilot program started is permitted to choose whether to be taxed under the Simplified Tax Calculation Method for VAT from 1 July 2012.

Announcement on Determination of Beneficial Ownership

Guoshuihan [2009] No.601 (Circular 601) was released by the State Administration of Taxation (“SAT”) in October 2009 providing high-level guidelines on determining Beneficial Owner under Double Tax Treaties and Arrangements (DTAs). During the implementation of Circular 601, taxpayers and tax authorities have encountered issues on the review process. In this light, SAT released SAT Public Notice [2012] No. 30 (“Announcement 30”) on 29 June 2012 as supplementary notice to Circular 601, The Announcement takes a totality approach to determine whether beneficial ownership exists. It takes into consideration comprehensively all the relevant factors listed in Article 2 of Circular 601. The substantive ownership shall not be negated by any single negative factor or absence of "the purpose for evasion or reduction of tax or for transfer or accumulation of profits" as stated in Article 1 of Circular 601. The factors on totality can be inferred from relevant legal and financial documents including articles of associations, financial statements, board resolutions and minutes, legal contracts, asset ownership certificates and invoice registers. In addition, the agency relationship should not affect the identification of beneficial ownership even though the relevant income is received through agent or any designated fee recipient. The Agent shall declare to the tax authority that it is not a beneficial owner.

Service Highlight

Gaining full understanding of the principles and rationales behind the regulations, especially in the ever-changing regulatory environment in China, is a must to be regulation compliant and mitigate relevant risks. We have been helping our clients to this direction with our experience in China. For any assistance or help from us, please feel free to call Ms Mary Li, our Marketing Executive, on +852 3579 8745 or email her at maryli@sinobridge-consulting.com.

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