



Transfer of VAT Credit Balances for Restructuring Transactions

Regulations discussed in this issue:

- SAT clarifies the treatment of input VAT credit surplus for corporate restructuring, SAT Announcement [2012] No.55

Background and KPMG observations

On 13 December 2012 the State Administration of Taxation (SAT) issued Announcement 55 [2012] (“Announcement 55”) dealing with the transferability of input VAT credit balances on asset restructuring transactions. Effectively, the SAT has confirmed that when an asset restructuring occurs, any VAT credit balance associated with those assets may be transferred to the purchaser. This Announcement is beneficial to taxpayers because it allows the inherent value of accrued VAT credit balances to be realised by a purchaser after an asset restructuring occurs.

To put this issue into some context, in Announcement [2011] No.13 (“Announcement 13”), the SAT concluded that certain corporate restructures involving the transfer of tangible goods fall outside the scope of VAT. The circumstances where this applied was limited to situations where:

- A taxpayer transfers tangible goods (“the original taxpayer”) in a corporate restructuring that takes the form of a merger, de-merger, sale or swap; and
- The original taxpayer transfers all or part of the tangible assets together with related debt claims, liabilities and workforce to other units or individuals (“the new taxpayer”).

While Announcement 13 was seen as being favourable to taxpayers engaging in corporate restructures, it still left many questions unanswered. KPMG [China Alert Issue 7 of 2011](#) contains a detailed analysis of Announcement 13 and highlights many of those unresolved issues. We do not repeat that analysis here. However, it suffices to note that one of the unresolved issues we identified was whether the accrued input VAT credit balance of the original taxpayer could be transferred to the new taxpayer.

Announcement 55 answers that question. The SAT confirms that the accrued input VAT credit balance of the original taxpayer may be transferred to the new taxpayer. Included in the detail of Announcement 55 is a form which must be filled in by the original taxpayer and lodged with both their in-charge tax official, and that of the new taxpayer, for the purposes of facilitating the transfer. As part of that process, the tax authorities will need to verify the amount of the input VAT credit balance being transferred.

Announcement 55 becomes effective from 1 January 2013. This does beg the question about whether transfers completed prior to that time also benefit from relief, or rather, whether Announcement 55 merely clarifies the existing policy position.

Going forward, Announcement 55 is clearly welcome news to taxpayers and provides a means by which to ensure that the value of any accrued input VAT credit balances may be transferred to the new taxpayer. It effectively means that such a balance is an asset of value.

One issue of concern is whether the beneficial nature of Announcement 55 may be later curtailed if evidence of trafficking in loss transfers starts to emerge (for example, if companies with chronic losses transfer their assets prior to deregistration). Perhaps the limited context in which asset transfers may be treated as being outside the scope of VAT will operate to prevent loss trafficking. As an example, if relief under Announcement 13 is limited to situations where the economic ownership of the underlying assets remains unchanged, such as the transfer of assets within a wholly-owned group of companies, then the potential for abuse is overcome.

More generally, the vague and uncertain scope of Announcement 13 remains an issue. The precise scope of transactions which may benefit from relief can be difficult to identify; the scope of relief provided under VAT is subtly different from the relief provided for Business Tax (BT) purposes under Announcement 51 [2011], which is also different from that provided for corporate income tax (CIT) purposes under Circular Caishui [2009] 59. In short, the alignment of each of these concessions would be a welcome development.

Finally, in due course Announcement 13 will need to be updated as a result of the VAT pilot program. The relief provided in Announcement 13 currently only extends to the VAT payable in respect of the transfer of tangible goods. Given that VAT now applies to many parts of the services industry, and to certain dealings in intangible assets throughout a broad range of cities and provinces in China, this relief should be extended. Internationally, many countries allow zero rating for VAT purposes where there is the sale of a business on a going concern basis. The adoption of some of the principles used internationally would provide greater certainty.

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