



## 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.

For further assistance in relation to the VAT reforms in China, please contact a member of KPMG's Indirect Tax Centre of Excellence or your preferred KPMG advisor:

**Khoonming Ho**  
**Partner in Charge, Tax**  
**China and Hong Kong SAR**  
Tel. +86 (10) 8508 7082  
khoonming.ho@kpmg.com

**Shirley Shen**  
**Senior Manager, Tax**  
**Northern China**  
Tel. +86 (10) 8508 7586  
yinghua.shen@kpmg.com

**Jean Ngan Li**  
**Partner, Tax**  
**Southern China**  
Tel. +86 (755) 2547 1198  
jean.li@kpmg.com

**Lachlan Wolfers**  
**Leader Indirect Tax Centre of Excellence**  
**National**  
Tel. +86 (21) 2212 3515  
lachlan.wolfers@kpmg.com

**John Wang**  
**Partner, Tax**  
**Central China**  
Tel. +86 (21) 2212 3438  
john.wang@kpmg.com

**Karmen Yeung**  
**Partner, Tax**  
**Hong Kong**  
Tel. +852 2143 8753  
karmen.yeung@kpmg.com

# Contact us

## **Khoonming Ho**

Partner in Charge, Tax  
China and Hong Kong SAR  
Tel. +86 (10) 8508 7082  
khoonming.ho@kpmg.com

## **Beijing/Shenyang**

### **David Ling**

Partner in Charge, Tax  
Northern China  
Tel. +86 (10) 8508 7083  
david.ling@kpmg.com

## **Qingdao**

### **Vincent Pang**

Tel. +86 (532) 8907 1728  
vincent.pang@kpmg.com

## **Shanghai/Nanjing**

### **Lewis Lu**

Partner in Charge, Tax  
Central China  
Tel. +86 (21) 2212 3421  
lewis.lu@kpmg.com

## **Hangzhou**

### **Martin Ng**

Tel. +86 (571) 2803 8081  
martin.ng@kpmg.com

## **Chengdu**

### **Anthony Chau**

Tel. +86 (28) 8673 3916  
anthony.chau@kpmg.com

## **Guangzhou**

### **Lilly Li**

Tel. +86 (20) 3813 8999  
lilly.li@kpmg.com

## **Fuzhou/Xiamen**

### **Jean Jin Li**

Tel. +86 (592) 2150 888  
jean.j.li@kpmg.com

## **Shenzhen**

### **Eileen Sun**

Partner in Charge, Tax  
Southern China  
Tel. +86 (755) 2547 1188  
eileen.gh.sun@kpmg.com

## **Hong Kong**

### **Karmen Yeung**

Tel. +852 2143 8753  
karmen.yeung@kpmg.com

## **Northern China**

### **David Ling**

Partner in Charge, Tax  
Northern China  
Tel. +86 (10) 8508 7083  
david.ling@kpmg.com

## **Vaughn Barber**

Tel. +86 (10) 8508 7071  
vaughn.barber@kpmg.com

## **Roger Di**

Tel. +86 (10) 8508 7512  
roger.di@kpmg.com

## **John Gu**

Tel. +86 (10) 8508 7095  
john.gu@kpmg.com

## **Jonathan Jia**

Tel. +86 (10) 8508 7517  
jonathan.jia@kpmg.com

## **Paul Ma**

Tel. +86 (10) 8508 7076  
paul.ma@kpmg.com

## **Vincent Pang**

Tel. +86 (10) 8508 7516  
+86 (532) 8907 1728  
vincent.pang@kpmg.com

## **Michael Wong**

Tel. +86 (10) 8508 7085  
michael.wong@kpmg.com

## **Irene Yan**

Tel. +86 (10) 8508 7508  
irene.yan@kpmg.com

## **Leonard Zhang**

Tel. +86 (10) 8508 7511  
leonard.zhang@kpmg.com

## **Tracy Zhang**

Tel. +86 (10) 8508 7509  
tracy.h.zhang@kpmg.com

## **Abe Zhao**

Tel. +86 (10) 8508 7096  
abe.zhao@kpmg.com

## **Catherine Zhao**

Tel. +86 (10) 8508 7515  
catherine.zhao@kpmg.com

## **Kevin Lee**

Tel. +86 (10) 8508 7536  
kevin.lee@kpmg.com

## **Jessica Xie**

Tel. +86 (10) 8508 7540  
jessica.xie@kpmg.com

## **Eric Zhou**

Tel. +86 (10) 8508 7610  
ec.zhou@kpmg.com

## **David Chamberlain**

Tel. +86 (10) 8508 7056  
david.chamberlain@kpmg.com

## **Tony Feng**

Tel. +86 (10) 8508 7531  
tony.feng@kpmg.com

## **Tiansheng Zhang**

Tel. +86 (10) 8508 7526  
tiansheng.zhang@kpmg.com

## **Central China**

### **Lewis Lu**

Partner in Charge, Tax  
Central China  
Tel. +86 (21) 2212 3421  
lewis.lu@kpmg.com

## **Anthony Chau**

Tel. +86 (21) 2212 3206  
+86 (28) 8673 3916  
anthony.chau@kpmg.com

## **Cheng Chi**

Tel. +86 (21) 2212 3433  
cheng.chi@kpmg.com

## **Chris Ho**

Tel. +86 (21) 2212 3406  
chris.ho@kpmg.com

## **Lily Kang**

Tel. +86 (21) 2212 3359  
lily.kang@kpmg.com

## **Sunny Leung**

Tel. +86 (21) 2212 3488  
sunny.leung@kpmg.com

## **Christopher Mak**

Tel. +86 (21) 2212 3409  
christopher.mak@kpmg.com

## **Martin Ng**

Tel. +86 (21) 2212 2881  
+86 (571) 2803 8081  
martin.ng@kpmg.com

## **Yasuhiko Otani**

Tel. +86 (21) 2212 3360  
yasuhiko.otani@kpmg.com

## **John Wang**

Tel. +86 (21) 2212 3438  
john.wang@kpmg.com

## **Jennifer Weng**

Tel. +86 (21) 2212 3431  
jennifer.weng@kpmg.com

## **Lachlan Wolfers**

Tel. +86 (21) 2212 3515  
lachlan.wolfers@kpmg.com

## **Grace Xie**

Tel. +86 (21) 2212 3422  
grace.xie@kpmg.com

## **Bruce Xu**

Tel. +86 (21) 2212 3396  
bruce.xu@kpmg.com

## **Zichong Xu**

Tel. +86 (21) 2212 3404  
zichong.xu@kpmg.com

## **William Zhang**

Tel. +86 (21) 2212 3415  
william.zhang@kpmg.com

## **Michelle Zhou**

Tel. +86 (21) 2212 3458  
michelle.b.zhou@kpmg.com

## **Cheng Dong**

Tel. +86 (21) 2212 3410  
cheng.dong@kpmg.com

## **David Huang**

Tel. +86 (21) 2212 3605  
david.huang@kpmg.com

## **Dylan Jeng**

Tel. +86 (21) 2212 3080  
dylan.jeng@kpmg.com

## **Ho Yin Leung**

Tel. +86 (21) 2212 3358  
hoyin.leung@kpmg.com

## **Henry Ngai**

Tel. +86 (21) 2212 3411  
henry.ngai@kpmg.com

## **Amy Rao**

Tel. +86 (21) 2212 3208  
amy.rao@kpmg.com

## **Southern China**

### **Eileen Sun**

Partner in Charge, Tax  
Southern China  
Tel. +86 (755) 2547 1188  
eileen.gh.sun@kpmg.com

## **Sam Fan**

Tel. +86 (755) 2547 1071  
sam.kh.fan@kpmg.com

## **Angie Ho**

Tel. +86 (755) 2547 1276  
angie.ho@kpmg.com

## **Jean Jin Li**

Tel. +86 (755) 2547 1128  
Tel. +86 (592) 2150 888  
jean.j.li@kpmg.com

## **Jean Ngan Li**

Tel. +86 (755) 2547 1198  
jean.li@kpmg.com

## **Lilly Li**

Tel. +86 (20) 3813 8999  
lilly.li@kpmg.com

## **Kelly Liao**

Tel. +86 (20) 3813 8668  
kelly.liao@kpmg.com

## **Maria Mei**

Tel. +86 (592) 2150 807  
maria.mei@kpmg.com

## **Michelle Sun**

Tel. +86 (20) 3813 8615  
michelle.sun@kpmg.com

## **Bin Yang**

Tel. +86 (20) 3813 8605  
bin.yang@kpmg.com

## **Hong Kong**

### **Ayesha M. Lau**

Partner in Charge, Tax  
Hong Kong SAR  
Tel. +852 2826 7165  
ayesha.lau@kpmg.com

## **Chris Abbiss**

Tel. +852 2826 7226  
chris.abbiss@kpmg.com

## **Darren Bowdern**

Tel. +852 2826 7166  
darren.bowdern@kpmg.com

## **Barbara Forrest**

Tel. +852 2978 8941  
barbara.forrest@kpmg.com

## **Daniel Hui**

Tel. +852 2685 7815  
daniel.hui@kpmg.com

## **Charles Kinsley**

Tel. +852 2826 8070  
charles.kinsley@kpmg.com

## **John Kondos**

Tel. +852 2685 7457  
john.kondos@kpmg.com

## **Alice Leung**

Tel. +852 2143 8711  
alice.leung@kpmg.com

## **Curtis Ng**

Tel. +852 2143 8709  
curtis.ng@kpmg.com

## **Kari Pahlman**

Tel. +852 2143 8777  
kari.pahlman@kpmg.com

## **John Timpany**

Tel. +852 2143 8790  
john.timpany@kpmg.com

## **Wade Wagatsuma**

Tel. +852 2685 7806  
wade.wagatsuma@kpmg.com

## **Jennifer Wong**

Tel. +852 2978 8288  
jennifer.wong@kpmg.com

## **Christopher Xing**

Tel. +852 2978 8965  
christopher.xing@kpmg.com

## **Karmen Yeung**

Tel. +852 2143 8753  
karmen.yeung@kpmg.com

## **Alex Lau**

Tel. +852 2143 8597  
alex.lau@kpmg.com

## **Benjamin Pong**

Tel. +852 2143 8525  
benjamin.pong@kpmg.com

## **Rebecca Chin**

Tel. +852 2978 8987  
rebecca.chin@kpmg.com

## **Kate Lai**

Tel. +852 2978 8942  
kate.lai@kpmg.com

[kpmg.com/cn](http://kpmg.com/cn)

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.

© 2012 KPMG, a Hong Kong partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. © 2012 KPMG Advisory (China) Limited, a wholly foreign owned enterprise in China and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved. The KPMG name, logo and "cutting through complexity" are registered trademarks or trademarks of KPMG International.