

# China Tax Weekly Update

ISSUE 24 | June 2016

Reference: SAT  
Announcement [2016] No. 37  
Issuance date: 16 June 2016  
Effective date: 6 April 2016

Relevant industries: All  
Relevant companies: All  
Relevant taxes: CIT / IIT

Potential impacts on  
businesses:

- Effective tax burden reduced

You may click [here](#) to access full content of the circular.

## New China-Germany DTA takes effect

On 16 June 2016, the State Administration of Taxation (SAT) issued SAT Announcement [2016] No. 37 (Announcement 37) to clarify the *Agreement Between the People's Republic of China and the Federal Republic of Germany for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital* ("New DTA") and its *Protocol*. This was signed in Berlin on 28 March 2014 and formally became effective on 6 April 2016. Announcement 37 mentions that all required approval procedures from the China and Germany sides have been fulfilled. The new DTA shall apply to income derived after 1 January 2017.

Compared with the DTA between the China and the Germany signed on 10 June 1985 ("Old DTA"), main changes in the New DTA are as follows:

	New DTA	Old DTA
<b>Article 4</b> <b>Resident</b>	<ul style="list-style-type: none"> <li>• The term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, <u>place of incorporation</u>, <u>place of effective management</u> or any other criterion of a similar nature, and also includes that State or its local authorities.</li> </ul>	<ul style="list-style-type: none"> <li>• The term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, <u>place of head office</u> or any other criterion of a similar nature.</li> </ul>
<b>Article 5</b> <b>Permanent Establishment ("PE")</b>	<ul style="list-style-type: none"> <li>• The term "PE" encompasses:               <ul style="list-style-type: none"> <li>❑ A building site, or construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than <u>twelve months</u>.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• The term "PE" encompasses:               <ul style="list-style-type: none"> <li>❑ Building site or assembly project or any supervising activities connected therewith, if the construction, assembly or supervising activities last for more than <u>6 months</u>.</li> </ul> </li> </ul>

	New DTA	Old DTA
<b>Article 5</b> <b>Permanent Establishment (“PE”)</b> <b>(Cont’d)</b>	<ul style="list-style-type: none"> <li>❑ The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged for such purpose, but only if activities of that nature continue (for the same or a connected project) within a Contracting State for a period or periods aggregating more than <u>183 days</u> within any twelve-month period.</li> <li>• An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. <u>However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises, he will not be considered an agent of an independent status within the meaning of this paragraph.</u></li> </ul>	<ul style="list-style-type: none"> <li>❑ The furnishing of services, including consultancy services, by an enterprise of a Contracting State through its employees or other personnel, when the activities in the other Contracting State (for the same or a connected project) continue for a period or periods aggregating more than <del>6 months</del> within any 12-month period.</li> <li>• An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.</li> </ul>

	New DTA	Old DTA
<b>Article 10</b> <i>Dividends</i>	<ul style="list-style-type: none"> <li>If the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed: <ul style="list-style-type: none"> <li>☐ 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends. <b>(New)</b></li> <li>☐ 15 per cent of the gross amount of the dividends where those dividends are paid out of income or gains derived directly or indirectly from immovable property within the meaning of Article 6 by an investment vehicle which distributes most of this income or gains annually and whose income or gains from such immovable property is exempted from tax. <b>(New)</b></li> <li>☐ 10 per cent of the gross amount of the dividends in all other cases</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>If the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10 per cent of the gross amount of the dividends</li> </ul>
<b>Article 12</b> <i>Royalties</i>	<ul style="list-style-type: none"> <li>Where payments of any kind received as a consideration for the use of, or the right to use, any industrial, commercial or scientific equipment apply to 10% tax rates, <u>60%</u> of the gross amount of the royalties shall be taxed.</li> </ul>	<ul style="list-style-type: none"> <li>For the application of 10% tax rate there shall be taken as the taxable base of the royalties paid for the use of or the right to use any industrial, commercial or scientific equipment, <del>70%</del> of the gross amount of these payments. (Item 5 of the Protocol)</li> </ul>
<b>Article 13</b> <i>Capital Gains</i>	<ul style="list-style-type: none"> <li>Gains derived by a resident of a Contracting State from the alienation of shares deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State. <b>(New)</b></li> <li>Gains from the alienation of any property, other than that referred to in paragraphs 1 to 5, <u>shall be taxable only in the Contracting State of which the alienator is a resident.</u></li> </ul>	<ul style="list-style-type: none"> <li>Gains derived by a resident of a Contracting State from the alienation of any property other than that referred to in paragraphs 1 to 3 and which is situated in the other Contracting State, <del>may be taxed in that other State.</del></li> </ul>

	New DTA	Old DTA
<b>Article 14</b> <b>Independent Personal Services</b>	<ul style="list-style-type: none"> <li>• Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in one of the following circumstances, when such income may also be taxed in the other Contracting State: <ul style="list-style-type: none"> <li>❑ if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State;</li> <li>❑ if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in <u>any twelve-month period commencing or ending in the fiscal year</u> concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State. However, such income may also be taxed in the other Contracting State: <ul style="list-style-type: none"> <li>❑ if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities but only so much of the income as is attributable to that fixed base; or</li> <li>❑ if his stay in the other Contracting State is for a period or periods, in the aggregate, more than 183 days in <del>the</del> <u>calendar year</u> concerned, only so much of the income as is derived from the activities in that other State.</li> </ul> </li> </ul>

	New DTA	Old DTA
<b>Article 15</b> <i>Income from Employment</i>	<ul style="list-style-type: none"> <li>• Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if: <ul style="list-style-type: none"> <li>❑ the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in <u>any twelve-month period commencing or ending in the fiscal year</u> concerned, and</li> <li>❑ the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and</li> <li>❑ the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if: <ul style="list-style-type: none"> <li>❑ the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days <del>in the calendar year</del> concerned; and</li> <li>❑ the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and</li> <li>❑ the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.</li> </ul> </li> </ul>
<b>Article 21</b> <i>Other Income</i>		<ul style="list-style-type: none"> <li>• <del>Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State which are not covered under the preceding Articles of this Agreement may be taxed in the other Contracting State, if they are arising in that other State.</del></li> </ul>

	New DTA	Old DTA
<p><b>Article 23</b></p> <p><i>Methods for Elimination of Double Taxation</i></p>	<ul style="list-style-type: none"> <li>• In China, in accordance with the provisions of the law of China, double taxation shall be eliminated as follows: <ul style="list-style-type: none"> <li>❑ Where a resident of China derives income from the Federal Republic of Germany, the amount of tax on that income payable in the Federal Republic of Germany in accordance with the provisions of this Agreement may be credited against the Chinese tax imposed on that resident. The amount of the credit, however, shall not exceed the amount of the Chinese tax on that income computed in accordance with the taxation laws and regulations of China.</li> <li>❑ Where the income derived from the Federal Republic of Germany is a dividend paid by a company which is a resident of the Federal Republic of Germany to a company which is a resident of China and which owns not less than <u>20 per cent</u> of the shares of the company paying the dividend, the credit shall take into account the tax paid to the Federal Republic of Germany by the company paying the dividend in respect of its income.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• For a resident of the People's Republic of China double taxation shall be eliminated as follows: <ul style="list-style-type: none"> <li>❑ the German tax levied in accordance with the provisions of this Agreement on income derived from the Federal Republic of Germany shall be allowed as a credit against the Chinese tax to be paid by that resident in the People's Republic of China. The amount of German tax to be credited, however, shall not exceed the amount of Chinese tax computed with respect to such income in accordance with the tax regulations of the People's Republic of China;</li> <li>❑ where the income consists of dividends paid by a company which is a resident of the Federal Republic of Germany to a company which is a resident of the People's Republic of China and which owns at least 10 per cent of the capital of the first-mentioned company the tax paid by the first-mentioned company may be credited against the tax imposed by the People's Republic of China, to the extent it can be attributed to such.</li> </ul> </li> </ul>

	New DTA	Old DTA
<b>Article 29</b> <b>Miscellaneous Rules</b>	<ul style="list-style-type: none"> <li>The benefits of this Agreement shall not be available where the main purpose for entering into certain transactions or arrangements was to secure these benefits and obtaining those benefits would be contrary to the object and purpose of the relevant provisions of this Agreement. <b>(New)</b></li> <li>This Agreement shall not be interpreted to mean that a Contracting State is prevented from applying its domestic legal provisions on the prevention of tax evasion or tax avoidance. <b>(New)</b></li> <li>Where a person considers that the application of the preceding paragraphs results for him in taxation not in accordance with the provisions of this Agreement, he may apply for a mutual agreement procedure. <b>(New)</b></li> </ul>	

- SAT has published the New DTA on its website, You may click [here](#) to access full content of the New DTA.

Reference: N/A  
Issuance date: N/A  
Effective date: N/A

Relevant industries: All  
Relevant companies: All  
Relevant taxes: VAT

Potential impacts on businesses:

- Effective tax burden reduced

You may click [here](#) to access full content of the circular.

## China and Poland sign air transport tax agreement

Based on news published on the website of SAT on 21 June 2016, China and Poland recently signed the *Agreement between the Government of the People's Republic of China and the Government of the Polish People's Republic on Mutual Exemption of VAT or Similar Taxes over International Air Transport Services* (China-Polish Tax Agreement).

The signing of the China-Polish Tax Agreement will, on the basis of mutual exemption of income tax over international air transport as provided for in the China-Polish DTA, further reduce the tax burdens of indirect taxes of the enterprises of the two countries engaged in international air transport. Prior to this, China has realized exemption of indirect taxes over international transport services with over 60 countries/regions in the form of different types of inter-governmental agreements such as tax agreements, international transport agreements and exchange of documents between the governments.

Reference: N/A  
 Issuance date: N/A  
 Effective date: N/A

Relevant industries: All  
 Relevant companies: Listed  
 Companies conduct major  
 assets restructuring  
 Relevant taxes: N/A

Potential impacts on  
 businesses:

- Regulation on restructuring for listing are more strict

You may click [here](#) to access full content of the circular.

## CSRC plans new rules for restructuring listed companies

On 17 June 2016, China Securities Regulatory Commission (CSRC) invited the public to provide comments on the revised *Measures for Major Assets Restructuring of Listed Companies* ("Draft for comments").

Non-listed companies frequently enter into reverse mergers with already listed companies in order to obtain a stock exchange listing without going through the full IPO process, with its exacting requirements. This is commonly referred to as "Back-door listing".

CSRC use the term "restructuring for listing" when referring to reverse mergers. Several steps were taken by CSRC in the past to try to subject such transactions to the same standards as would be applied to an IPO.

- *Measures for Major Assets Restructuring of Listed Companies* (CSRC Order No. 73, "Restructuring measures") issued in August 2011;
- Further measures in November 2013.

Based on the existing rules, two elements are need to be satisfied at the same time to determine whether a restructuring constitutes back-door listing:

- Change of controlling stake of listing company;
- Total assets acquired by a listed company, from the company driving the reverse merger and its related parties, constitute more than 100% of the original total assets of the listed company. Measurement of this ratio is made using the audited consolidated financial accounting report of the listed company for the accounting year preceding the change in controlling stake in the listed company.

The proposed 2016 rules would now change this definition and therefore the scope of the rules. Five articles of "Restructuring measures" are revised in the "Draft for comments", mainly include the following three aspects:

<b>Identification criteria are improved</b>	<ul style="list-style-type: none"> <li>• Under current rules total assets are the sole metric for determining whether a reverse merger is in point, and this is easily manipulated to fall outside the scope of the CSRC's rules.</li> </ul> <p>After the 2016 rule revisions, in addition to total assets, there will another four metrics for determining whether a reverse merger is in point. These metrics look at: net assets, business income, net profits and shares. As long as any metric reaches 100% of the original amount, the restructuring for listing shall be identified as a satisfied transaction scale.</p> <p>In addition to the above quantitative metric, a special indicator to measure the fundamental change of main business is also incorporated into the revised measures.</p> <ul style="list-style-type: none"> <li>• Further clarifications are made to the standard to assess whether there has been a "change in controlling stake". Three dimensions will be taken into account, including "equity ratio", "board structure" and "management control". This draws on the experience of mature markets.</li> <li>• Total period within which the evaluation is made is set as 60 months. This focuses on whether assets are acquired by a listed company from a buyer and its related parties <u>within 60 months</u> after a change of controlling stake of that listed company. If this results in a fundamental change to the business of the listed company, the listed company must get approval from CSRC to conduct the reverse merger.</li> </ul>
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<p><b>Arbitrage is blocked</b></p>	<ul style="list-style-type: none"> <li>The relevant financing to be used to conduct a reverse merger listing is abolished. (<u>Except for transactions fall within the stipulated major assets restructuring</u>, a listed company issuing shares for acquisition of assets may raise partial complementary funds at the same time, the pricing method of which shall comply with the relevant provisions.)</li> <li>Extend the lock-up period for shares held by relevant shareholders. The lock-up period for existing and new controlling shareholders are both 36 months while that are extended from 12 months to 24 months for other new shareholders</li> <li>If a listed company intends to carry out a reverse merger, CSRC requires that the listed company, its controlling shareholders and actual controlling party: <ul style="list-style-type: none"> <li>(i) Are not under investigation by the judicial authorities for an alleged crime or under investigation by the CSRC for an alleged violation;</li> <li>(ii) A 36-month period has expired since cessation of the alleged crime or violation;</li> <li>(iii) Are not subject to open reprimand by the stock exchange and no major dishonesty act during the past 12 months</li> </ul> </li> </ul>
<p><b>Liability clauses are supplemented</b></p>	<ul style="list-style-type: none"> <li>Specify the liability clauses for avoiding audit of reverse merger. (“for seeking to evade the application of the CSRC rules for reverse mergers”)</li> </ul> <p>Where the transaction is yet to complete, CSRC may order the listed company to make supplementary disclosure of the relevant information, suspend trading, and submit the application documents</p> <p>Where the transaction is completed, the listed company may be punished with a warning, penalty, take measures to prohibit a party from market entry. Serious cases which constitute a criminal offence shall be forwarded to the judicial authorities</p>

CSR also explained the certain issues in relation to [performance compensation of listed company](#) and [raise complementary funds when listed company issuing shares for acquisition of assets](#).

Reference: Cai Shui [2016] No. 68  
 Issuance date: 18 June 2016  
 Effective date: 1 May 2016

Relevant industries: All  
 Relevant companies: All  
 Relevant taxes: VAT

Potential impacts on businesses:

- Compliance risks due to regulatory uncertainties reduced

You may click the circular titles to access full content of the circulars.

## Further VAT implementation rules by MOF and SAT

In order to help better implement the new VAT rules *Measures for Implementation of the Pilot Program of VAT Reform (Cai Shui [2016] No. 36, "Circular 36")*, the Ministry of Finance (MOF) and the SAT jointly clarify VAT treatment of several specific services in their recent Notice that were issued on 18 June 2016.

- ❑ [MOF and SAT further clarify VAT treatment of services in regard of reinsurance arrangements, lease of immovable properties and non-academic education \(Cai Shui \[2016\] No. 68, "Circular 68"\)](#)
  - Circular 68 further clarifies the following: (i). VAT exemption may apply if Chinese reinsurer provides reinsurance services to an offshore insurer which is wholly consumed outside of China; (ii). Reinsurance services take on the same VAT treatment as the underlying insurance policy which is being reinsured; (iii). Calculation of VAT payable and VAT filing for lease of old real estate developed by real estate development enterprises (Old real estate projects shall mean real estate projects for which the contracted date of commencement stated in the "Building Construction Permit" is before 30 April 2016.); (iv). Calculation of VAT payable for non-academic educations services, etc. Circular 68 takes effect from 1 May 2016.

\* With regard to the tax impact that Circular 68 making to reinsurance services, you may click KPMG [China Tax Alert: New Circular clarifies China's VAT treatment of reinsurance arrangements \(Issue 17, June 2016\)](#).

Meanwhile, local tax bureaus also issued several VAT implementation rules and guidance, including:

- ❑ [Beijing State Tax Bureau \(BSTB\) issues notice on prepayment of VAT by non-Beijing taxpayers for provision of construction services in Beijing \(BSTB Announcement \[2016\] No. 9\)](#)
- ❑ [BSTB and Beijing Finance Bureau \(BFB\) issue notice on implementation of consolidated VAT filing for 16 banks and insurance companies \(BSTB and BFB Announcement \[2016\] No. 18\)](#)
- ❑ [Q&A on hot VAT issues by BSTB](#)
- ❑ [Q&A on VAT issues of construction industry by Anhui STB](#)
- ❑ [Q&A on hot issues for real estate sectors under the VAT reform by Henan STB \(Issue 14\)](#)
- ❑ [Q&A on use of VAT invoices by Fujian STB \(Issue 1\)](#)

The State Council, the MOF and the SAT have recently issued many circulars for the implementation of Circular 36. You may click KPMG *China Tax Weekly Update* [Issue 13](#), [Issue 14](#), [Issue 15](#), [Issue 16](#), [Issue 17](#), [Issue 18](#), [Issue 19](#), [Issue 20](#), [Issue 21](#), [Issue 22](#) and [Issue 23](#) to understand the details.

\*\* On the occurrence of Circular 36 announcement, KPMG immediately issued a series of China Tax Alerts to provide an overview of the high level policies and general impacts across all industries. Focusing on construction, real estate, finance and lifestyle services, at the same time, we also issued specific alerts for each of the three major industries affected by these changes. You may click the following links to read:

- ❑ [China Tax Alert: China's new VAT rates & rules –high level policies and general impacts across all industries \(Issue 9, March 2016\)](#)
- ❑ [China Tax Alert: China's new VAT rates & rules –Financial Services impacts \(Issue 10, March 2016\)](#)
- ❑ [China Tax Alert: China's new VAT rates & rules –Lifestyle Services impacts \(Issue 11, March 2016\)](#)
- ❑ [China Tax Alert: China's new VAT rates & rules –Real Estate & Construction industry impacts \(Issue 12, March 2016\)](#)

Reference: N/A  
Issuance date: N/A  
Effective date: N/A

Relevant industries: All  
Relevant companies: All  
Relevant taxes: VAT

Potential impacts on  
businesses:

- Risks of being challenged due to non-compliance issues increased

You may click [here](#) to access full content of the circular.

## SAT “names and shames” a further 10 tax fraud cases

As mentioned in KPMG [China Tax Weekly Update \(Issue 16, May 2016\)](#), the SAT revised the Trial Measures for the Public Disclosure of Significant Tax Fraud Cases (“the Measures”) in April 2016. The Measures set common criteria for nationwide disclosure of tax fraud cases under a ‘name and shame’ approach. Among the cases covered by the publication criteria are cases in which taxpayers obtain export tax refunds by filing false export declarations with the tax authorities, or obtain refunds by any other deceptive means.

SAT, on 17 June 2016, made public the other 10 fraud cases involving export tax refunds on its official website following 5 such cases exposed on 17 May. These 10 fraud cases occurred in Shandong, Zhejiang, Fujian, Guangdong, Jiangsu and Hainan. The largest tax fraud amount exceeds RMB 80 million.



## *MOFCOM clarifies anti-dumping duty rate for a Japanese company renamed*

On 16 June 2016, the Ministry of Commerce (MOFCOM) issued Announcement [2016] No. 28 to clarify that OSAKA SODA., LTD may be exempted from anti-dumping duty because of OSAKA SODA., LTD succeeds to applicable rate of anti-dumping duty of DAISO CO., LTD against epichlorohydrin and its other rights and obligations. If epichlorohydrin that is to be exported to China in the name of DAISO CO., LTD shall be subject to the anti-dumping duty at a rate applicable to other Japanese companies in the anti-dumping measures against epichlorohydrin, i.e., 71.5%. This Announcement took effect from 16 June 2016.

You may click [here](#) to access full content of the circular.

## *Shanghai clarifies IIT exemption to encourage R&D*

On 13 June 2016, Shanghai Local Tax Bureau issued the Administrative Measures on Recordal Filing for Individual Income Tax (IIT) Exemption for the Transformation of Scientific and Technological Results (Trial) (Hu Di Shui Han [2016] No. 39). The measures clarify certain issues in relation to the recordal filing for IIT exemption, such as documentation requirements, filing procedures etc.

You may click [here](#) to access full content of the circular.

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