

China Tax Center China Tax & Investment Express

*China Tax & Investment Express (CTIE)** brings you the latest tax and business announcements on a weekly basis. We selected some comparatively key announcements to provide for a synopsis and we also provide a link that leads you to the full content of each latest announcement (in Chinese). Please feel free to contact your EY client service professionals for further assistance if you find the announcements have an impact on your business operations.

CTIE does not replace our *China Tax & Investment News** which will continue to be prepared and distributed to provide more in-depth analyses of topical tax and business developments in China.

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Tax circulars

- ▶ Public notice (PN) regarding expanding the coverage of the full refund policy of input Value-added Tax (VAT) credits brought forward from previous periods (MOF/STA PN [2022] No. 21)
- ▶ PN regarding administrative matters related to expanding the coverage of the full refund policy of input VAT credits brought forward from previous periods (STA PN [2022] No. 11)

Synopsis

According to MOF/STA PN [2022] No. 14 ("PN 14", i.e., PN regarding further enhancing the implementation of the refund policy of input VAT credits brought forward from the previous periods), a refund policy of input VAT credits is applicable to enterprises engaging in manufacturing industry and etc.¹



Subsequently, to further improve the tax refund process and ease the burden and cash flow of more enterprises, the Ministry of Finance (MOF) and State Taxation Administration (STA) jointly released MOF/STA PN [2022] No. 21 ("PN 21") on 7 June 2022 to expand the scope of qualifying taxpayers to include enterprises (including self-employed industrial and commercial households) engaging in the seven industries² as follows:

- Retail and wholesale
- Agricultural, forestry, animal husbandry and fishery
- Accommodation and catering
- Resident services, repairs and other services
- Education
- Hygiene and social work
- Culture, sports and entertainment industries

Accordingly, eligible enterprises engaging in the abovementioned seven industries may apply for the refund of incremental input VAT credits (增量留抵税额) and accumulated input VAT credits brought forward from previous periods (存量留抵税额, in a lump-sum) in the VAT filing to be completed in July 2022 or onwards. The above contents related to the input VAT refund policy for eligible enterprises engaging in the abovementioned seven industries shall become effective on 1 July 2022.

On 7 June 2022, the STA also released STA PN [2022] No. 11 ("PN 11") to specify the relevant tax collection and administration matters in this regard. PN 11 became effective on 1 July 2022 as well.

Relevant taxpayers are advised to read the abovementioned circulars for details and fully leverage the benefits offered. If in doubt, timely consultations with professionals are highly recommended.

¹ "Enterprises engaging in the manufacturing industry and etc." as prescribed in PN 14 refers to enterprises that derive over 50% of VAT taxable income from six industries (including manufacturing, scientific research and technical services, etc.) as categorized in the Industrial Classification and Codes for National Economic Activities.

² "Enterprises engaging in the seven industries" as prescribed in PN 21 refers to enterprises that derive over 50% of VAT taxable income from the seven industries listed in PN 21 including retail and wholesale, agricultural, forestry, animal husbandry and fishery, etc. as categorized in the Industrial Classification and Codes for National Economic Activities.

You can click this link to access the full content of PN 21:

<http://www.chinatax.gov.cn/chinatax/n359/c5175898/content.html>

You can click this link to access the full content of PN 11:

<http://www.chinatax.gov.cn/chinatax/n359/c5175899/content.html>

You can click this link to access the full content of PN 14:

<http://www.chinatax.gov.cn/chinatax/n359/c5173759/content.html>



- ▶ Protocol to amend the “Agreement between the Government of the People’s Republic of China (PRC) and the Government of the Federative Republic of Brazil (Brazil) for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income” and the protocol thereto, signed in Beijing on 5 August 1991

Synopsis

To further ease the tax burden on businesses of the PRC/Brazil investing in the other contracting country and support the promotion of bilateral trade, on 23 May 2022, the Chinese government and Brazilian government reached an agreement on amending the “Agreement between the Government of the PRC and the Government of the Brazil for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income” (hereinafter referred to as the “the PRC-Brazil DTA”) and its protocol (hereinafter referred to as the “1991 Protocol”) signed in Beijing on 5 August 1991, and signed the protocol of the amendment (hereinafter referred to as the “New Protocol”). The New Protocol has not yet been ratified.

Key amendments made in New Protocol include the followings:

- Revises Article 5 (Permanent Establishment) of the PRC-Brazil DTA:
 - Revises the threshold for construction Permanent Establishment (PE)³ - A building site or construction or installation project constitutes a PE only if it lasts more than nine months instead of six months as prescribed in the existing PRC-Brazil DTA.
 - Revises the description of agency PE and independent agent to cope with that of the 2017 version of OECD tax convention.
 - Article 5.8 is newly added to introduce a concept of a person or enterprise “closely related to an enterprise” for the purposes of the Article 5 which is also in accordance with that of the 2017 version of OECD tax convention.
- Revises the applicable withholding tax rates under Article 10 (Dividends), Article 11 (Interest), and Article 12 (Royalties) of the PRC-Brazil DTA:

Types of income	Withholding tax rates as per the New Protocol ⁴	Withholding tax rates as per the PRC-Brazil DTA
Dividends	10%/15% ⁵	15%
Interest	10%/15% ⁶	15%
Royalties	15%/10% ⁷	25%/15%

The New Protocol also replaces a large part of the PRC-Brazil DTA and the 1991 Protocol, e.g., the preamble and Article 1 (Peoples Covered), Article 2 (Taxes Covered), Articles 3.1, 3.2 and 3.10 of Article 3 (General Definitions), Article 4.3 of Article 4 (Resident), Article 23 (Methods for the Elimination of Double Taxation), Article 25 (Mutual Agreement Procedure) and Article 26 (Exchange of Information), etc. The amendments generally follow the 2017 version of OECD tax convention.

Relevant investors and global enterprises that intend to invest or expand their investments in the PRC/Brazil are encouraged to study the New Protocol and consider the implications for their businesses. Please stay tuned and we will issue further updates concerning the effectiveness and enforcement of the New Protocol.

³ As stated in the New Protocol, to determine the nine-month period of a construction PE, the following should be observed:

- Where an enterprise of a Contracting State carries on activities in the other Contracting State at a place that constitutes a building site or construction or installation project and these activities are carried on during one or more periods of time that, in the aggregate, exceed 30 days without exceeding nine months, and

- *Connected activities are carried on at the same building site or construction or installation project site during different periods of time, each exceeding 30 days, by one or more enterprises closely related to the first-mentioned enterprise, these different periods of time shall be added to the period of time during which the first-mentioned enterprise has carried on activities at that building site or construction or installation project site.”*

However, in the determination of the profits of a building site or construction or installation project site, only the profits resulting from the activities of the PE attributed to that PE in the Contracting State in which the PE is situated should be considered. In cases in which the headquarter of an enterprise of a Contracting State undertakes the provision of goods or merchandise, and the PE of the enterprise situated in the other Contracting State undertakes the installation activities in connection with such goods or merchandise and has no involvement in the provision of the goods or merchandise, the profits derived from the provision of goods or merchandise by the headquarters shall not be attributed to the PE.

⁴ *Article 2 of the 1991 Protocol shall be revised as prescribed that, with respect to the withholding tax rates, the Contracting State in which the income arises shall just limit its tax to the rates given in the Articles instead of taxing in full first and later making a refund. After 23 May 2022 (i.e., the date of the conclusion of the New Protocol), Brazil agrees, if in any Agreement or Protocol with any other State to rates that are lower (including any exemption) than the ones provided in Articles 10, 11 and 12 in the PRC-Brazil DTA, such lower rates shall automatically be applicable under the same terms, from the time and for as long as such rates are applicable in that other Agreement. However, in the case of dividends, such rate shall in no case be lower than 5%, and in the case of interest and royalties, such rates shall in no case be lower than 10%.”*

⁵ *According to the revised Article 10.2, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:*

- *10% of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 10% of the capital of the company paying the dividends throughout a 365 day period that includes the day of the payment of the dividend (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganization, such as a merger or divisive reorganization, of the company that holds the shares or that pays the dividend);*
- *15% of the gross amount of the dividends in all other cases.*

However, this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

⁶ *According to the revised Article 11.2, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed:*

- *10% of the gross amount of the interest in respect of loans and credits granted by a bank for a period of at least five years to fund public works, as well as the acquisition of equipment, or the planning, installation or supplying of industrial or scientific equipment;*
- *15% of the gross amount of the interest in all other cases.*

⁷ *According to the revised Article 12.2, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed:*

- *15% of the gross amount of the royalties arising from the use or the right to use trademarks*
- *10% of the gross amount of the royalties in all other cases.*

You can click this link to access the full content of the New Protocol:

<http://www.chinatax.gov.cn/n810341/n810770/c1153307/5027018/files/123.pdf>

You can click this link to access the full content of the PRC-Brazil DTA and the 1991 Protocol:

<http://www.chinatax.gov.cn/n810341/n810770/c1153307/content.html>

- ▶ Notice regarding further clarifying the scope of insurance products applicable to the preferential Individual Income Tax policies for commercial health insurance (Caishui [2022] No. 21)

Synopsis

To meet people's need for diverse health care, the MOF, STA and China Banking and Insurance Regulatory Commission (CBIRC) jointly released Caishui [2022] No. 21 ("Circular 21") on 31 May 2022 to further clarify the scope of insurance products that are applicable to the preferential Individual Income Tax (IIT) policies⁸ for commercial health insurance.

According to Caishui [2017] No. 39 ("Circular 39", i.e., Notice regarding expanding the pilot IIT policies for commercial health insurance on a nationwide basis), which was issued in 2017, the specific product types, product guidance framework and model clauses of qualified commercial health insurance products shall be determined by the CBIRC in consultation with the MOF and STA.

Circular 21 specifies that where previous provisions on products are inconsistent with new provisions, the new provisions shall prevail.

Relevant parties are advised to read Circulars 21 and 39 for details and enjoy the benefits offered. If in doubt, consultations with professionals are always recommended.

⁸ According to Circular 39, individuals are allowed to claim deduction for IIT purposes for purchasing qualified commercial health insurance products with a deduction limit of RMB2,400 per year (or RMB200 per month). Where employers purchase qualified commercial health insurance products for their employees, such expenses should be considered as part of employees' remuneration and subject to IIT. While the remuneration is taxable, the abovementioned IIT deduction limit shall apply at the same time.

You can click this link to access the full content of Circular 21

http://szs.mof.gov.cn/zhengcefabu/202206/t20220608_3816320.htm

You can click this link to access the full content of Circular 39:

<http://www.chinatax.gov.cn/chinatax/n363/c5745795/content.html>

Other tax and business-related circulars publicly announced by central government authorities in the past week:

- ▶ Notice regarding soliciting public opinions to improve the implementation of the new combined tax and fee support policies (Shuizongbannafufa [2022] No. 42)
<http://www.chinatax.gov.cn/chinatax/n810341/n810825/c101434/c5175837/content.html>
- ▶ Notice regarding the "Catalog of Energy Saving & New Energy Vehicles Eligible for Preferential Vehicle and Vessel Tax Policies (39th Batch)", "Catalog of New Energy Vehicles Eligible for Vehicle Purchase Tax Exemption (55th Batch)" (MIIT PN [2022] No. 13)
http://www.caam.org.cn/chn/1/cate_2/con_5235854.html
- ▶ Notice regarding further ensuring financial services for industries in difficulty in response to the COVID-19 epidemic (Yinbaojianbanfa [2022] No. 64)
http://www.gov.cn/zhengce/zhengceku/2022-06/03/content_5693848.htm
- ▶ Notice regarding enhancing the supervision of fund utilization for purpose of related-party transactions of insurance institutions (Yinbaojiangui [2022] No. 11)
http://www.gov.cn/zhengce/zhengceku/2022-06/05/content_5694149.htm

- ▶ Guidelines on green finance in the banking and insurance industries (Yinbaojianfa [2022] No. 15)
http://www.gov.cn/zhengce/zhengceku/2022-06/03/content_5693849.htm
- ▶ Notice regarding matters related to regulating work related to the pilot issuance of real estate investment trusts (REITs) in the field of infrastructure for affordable rental housing (Zhengjianbanfa [2022] No. 53)
<http://www.csrc.gov.cn/csrc/c100028/c3044734/content.shtml>
- ▶ 2021 Annual Report on China's Anti-monopoly Law Enforcement
https://www.samr.gov.cn/xw/zj/202206/t20220608_347582.html
- ▶ Notice regarding the "Measures of Metering Services for Reducing Burdens on Medium and Small-sized Enterprises" (Shijianjiliangfa [2022] No. 51)
https://gkml.samr.gov.cn/nsjg/jls/202206/t20220608_347603.html
- ▶ Notice regarding the 2022 work tasks to rectify chaos in the field of pharmaceutical purchase and sales and medical services
<http://www.nhc.gov.cn/zycgj/hfgw/202206/dbf5090dec72457294221f2db85c6697.shtml>



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