

China Tax Center

China Tax &

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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.

*If you wish to access the previous issues of CTIE and *China Tax & Investment News*, please contact us.

Tax circulars

► **China Advance Pricing Arrangement Annual Report (2019) (Bilingual)**

Synopsis

On 29 October 2020, the State Taxation Administration (STA) announced the China Advance Pricing Arrangement (APA) Annual Report (2019) in both Chinese and English versions (hereinafter referred to as the "2019 APA Report"), which is the 11th edition of the APA annual report published by the STA.

The 2019 APA Report follows the content and framework of the reports of the previous years and introduces the latest APA system, implementation procedures and practice developments which contain data pertaining to the period from 1 January 2005 to 31 December 2019.

According to the 2019 APA Report, as of 31 December 2019, Chinese tax authorities have concluded 177 APAs, including 101 unilateral APAs and 76 bilateral APAs; in which 12 unilateral and nine bilateral APAs were concluded in 2019. Out of the nine bilateral APAs signed in 2019, half were signed with Asian countries and the rest with various countries including North America and Europe. Most of the APAs signed in 2019 still involve manufacturing industry, which demonstrates the role of taxation in serving real economy.

The 2019 APA report shall not be regarded as a legal basis for enterprises or the Chinese tax authorities to negotiate or conclude an APA, instead, it is intended to provide guidance to specific enterprises that are willing to enter into APAs with Chinese tax authorities and allow the APAs to serve as a reference for competent authorities and the general public to better understand China's APA program.

Our Transfer Pricing Team has published a WeChat news article on 25 November 2020 to discuss the 2019 APA Report in detail. You can follow us on WeChat by scanning the QR Code on the last page of this CTIE and search key words to access the full contents of the WeChat news article.

You can click this link to access the full content of the 2019 APA Report:

<http://www.chinatax.gov.cn/chinatax/n810214/n810606/c5157990/content.html>

► **Notice regarding consolidated Value-added Tax (VAT) filings of railway transportation enterprises (Caishui [2020] No. 56)**

Synopsis

On 30 October 2020, the Ministry of Finance (MOF) and STA jointly issued Caishui [2020] No. 56 ("Circular 56") to clarify certain matters related to consolidated VAT filings of railway transportation enterprises.

Key features of Circular 56 are as follows:

- From 1 January 2014, the railway group company as mentioned in Circular 56 and its branches shall calculate and pay VAT for their provision of railway transportation services and the related logistics auxiliary services in accordance with Caishui [2013] No. 74 ("Circular 74", i.e., "Provisional Measures on the VAT Calculation and Payment for Headquarters and Branches"). The branches listed in Annex III of Circular 56 will no longer need to pay VAT on a consolidated basis according to Circular 74 from the time specified for the cancellation of consolidated filings.
- The provisional VAT rate for branches listed in Annex 1 of Circular 56 is 1%. For branches listed in Annex 2 of Circular 56, headquarters of the joint-venture railway transportation enterprises shall conduct provisional VAT filings in accordance with the following measures:
 - The provisional VAT rate applicable to the sales at the level of headquarters of joint-venture railway transportation enterprises and their subordinate stations (including those entrusted with transportation management, the same below) is 1%.

Provisional VAT payable amount (at the level) = VAT sales amount (at the level) × 1%

- The provisional VAT rate applicable to the consolidated sales amount of headquarters of joint-venture railway transportation enterprises and their subordinate stations is 3%.

Consolidated provisional VAT payable amount = (VAT sales amount at the headquarter level + VAT sales amount at the subordinate station level) × 3% - (Provisional VAT payable amount at the headquarter level + Provisional VAT payable amount at the subordinate station level)

- The provision on annual filing stipulated in Article 8 of Circular 74 shall not apply to the railway group company mentioned in Circular 56 and its branches.

Circular 56 became effective on its promulgation date, i.e., 30 October 2020. At the same time, some other circulars including Caishui [2013] No. 86, Caishui [2013] No. 111, Caishui [2014] No. 54, Caishui [2014] No. 76, STA Public Notice [2014] No. 55, Caishui [2015] No. 87, Caishui [2017] No. 67 and Caishui [2019] No. 1 were abolished.

Relevant railway transportation enterprises are advised to read Circular 56 carefully and observe the regulations. If in doubt, consultations with professionals are always recommended.

You can click this link to access the full content of Circular 56:

http://szs.mof.gov.cn/zhengcefabu/202011/t20201119_3626186.htm

You can click this link to access the full content of Circular 74:

<http://www.chinatax.gov.cn/chinatax/n359/c465328/content.html>

Business circulars

- ▶ **Notice regarding issues related to the financial equity investment of insurance funds (Yinbaojianfa [2020] No. 54)**

Synopsis

To implement the decision of removing the financial equity investment restrictions for insurance funds by the State Council, on 12 November 2020, the China Banking and Insurance Regulatory Commission (CBIRC) released Yinbaojianfa [2020] No. 54 ("Circular 54") to specify the relevant issues.

Key features of Circular 54 are as follows:

Concept of financial equity investments

Financial equity investments refer to investments in equities of private companies directly held by insurance groups, companies or insurance assets management companies (hereinafter referred to as the "insurance institutions") as investors, and the insurance institutions and their related parties should not constitute control or joint control over the private companies.

The insurance institutions may engage in financial equity investments with their own funds and reserves for insurance liabilities.

Removing the financial equity investment restrictions

According to Circular 54, the restrictions of previous investment scope of insurance funds that only allowed industries related to insurance enterprises, non-insurance financial enterprises and elderly care, medical and other specific enterprises related to insurance business are now removed, so that insurance institutions are allowed to invest in a variety of industries.

Negative List

In the meantime, a negative list is established as prohibited investments for insurance funds which includes:

- ▶ Enterprises without an expected stable cash flow return and definite dividend distribution system or no value increment on marketing, technical, resources, competition advantages or assets. (Except for the participation in market-oriented or law-based debt-to equity swaps.)
- ▶ Enterprises that have major breaches of contracts in recent three years. (Except for the participation in market-oriented or law-based debt-to equity swaps.)
- ▶ Enterprises that have or face material adverse changes related to poor staff retention at core executive level or business personnel, losing competency in their target markets or core businesses, etc.
- ▶ Controlling shareholders or executive managers have been severely penalized by administrative or supervising authorities in recent three years or have been included in "the list of Dishonest Persons that subject to Enforcement".
- ▶ Enterprises that involve in substantial civil damages, major law disputes, or have major risks in shareholding that might result in dispute of ownership or damages of rights, etc.
- ▶ Enterprises that have relationships with any firms that provide investment consulting, legal, auditing, or assets valuation services to the insurance institutions.
- ▶ Enterprises that are engaging in industries or sectors (which are not in line with the macro policy orientation, or listed as prohibited/restricted investments), or investments that may damage the reputation of the insurance institutions.
- ▶ Enterprises that are engaging in high pollution or energy intensive industries and cannot meet the energy conservation/environment protection standards of China.
- ▶ Enterprises that are directly engaging in real estate development and construction, including development and sales of commercial residents.

- ▶ Other criteria to be stipulated by the CBIRC.

It is anticipated that, with the issuance of Circular 54 which scrap the equity investment restrictions for insurance funds, insurance funds shall be unleashed into direct finance, as well as certain strategic emerging industries.

Circular 54 became effective on its promulgation date, i.e., 12 November 2020 and certain previous policies that contradict with the contents of Circulars 54 will be abolished.

You can click this link to access the full content of Circular 54:

<http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=942106>

You can click this link to access the full content of the official interpretation of Circular 54:

<http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=942109>

- ▶ **Public notice (PN) regarding adjusting the Catalogue of Prohibited Commodities in processing trade (MOFCOM/GAC PN [2020] No. 54)**

Synopsis

To support the stable development of processing trade, on 5 November 2020, the Ministry of Commerce (MOFCOM) and General Administration of Customs (GAC) jointly released MOFCOM/GAC PN [2020] No. 54 ("PN 54") to adjust the Catalogue of Prohibited Commodities in processing trade.

According to PN 54, 199 products with 10 digital Harmonization System codes (HS codes) that are featuring higher technology and not involving excess energy consumption or high pollution are removed from the Catalogue of Prohibited Commodities in Processing Trade (hereinafter referred to as the "Prohibited Catalogue") which was released through MOFCOM/GAC PN [2014] No.90 ("PN 90", i.e., PN regarding the issuance of the Catalogue of Prohibited Commodities in Processing Trade). Meanwhile, the prohibiting methods of certain products are adjusted as prescribed in the attachment of PN 54.

The adjusted Prohibited Catalogue shall be implemented in accordance with the regulations as prescribed in PN 90.

PN 54 shall become effective from 1 December 2020. Relevant parties are encouraged to read PN 54 for more details. If in doubt, consultations with professionals are always helpful.

You can click this link to access the full content of PN 54:

<http://www.mofcom.gov.cn/article/b/c/202011/20201103015545.shtml>

You can click this link to access the full content of PN 90:

<http://www.mofcom.gov.cn/article/b/c/201412/20141200846002.shtml>

- ▶ **Approval on the overall plan for the pilot reform of "one integrated license" for greatly reducing industry access costs in Pudong New Area of Shanghai (Guohan [2020] No. 155)**

Synopsis

On 14 November 2020, the State Council issued Guohan [2020] No. 155 to approve the "Overall Plan for the Pilot Reform of 'One Integrated License' for Greatly Reducing Industry Access Costs in Pudong New Area of Shanghai" (hereinafter referred to as the "Overall Plan") and called for serious implementation.

Key features of the Overall Plan are as follows:

Overall objective

By the end of 2022, the pilot reform of "one integrated license" shall be carried out in Pudong New Area of Shanghai, and a comprehensive industry licensing system shall be established to fully achieve simplified application and approval procedures of government services, improve the services, and develop replicable experience for deepening the reform of "separating permits from business licenses" nationwide.

Major measures

► *Establish a comprehensive industry licensing system*

The first batch of 31 industries are selected to be covered in the pilot reform of “one integrated license” (see Appendix 1 of the Overall Plan), and the approval and certificate issuance of 25 administrative licensing items that were implemented by departments of the State Council are entrusted to Pudong New Area of Shanghai (see Appendix 2 of the Overall Plan). Simplify the application and approval procedures and integrate the multiple licenses required for one industry access into one comprehensive industry license, in which relevant information of individual licenses is also integrated.

► *Strengthen the integration and coordination of reform systems*

Deepen the reform of the notification and commitment mechanism, develop and apply systems for online processing, explore intelligent approval (no human verification required), and establish a mechanism of “good or bad review” for comprehensive industry licensing.

► *Establish a comprehensive industry supervision system*

Implement comprehensive industry supervision, accelerate the transformation of supervision methods (e.g., “internet plus supervision”) and strengthen social autonomy function.

► *Ensure the implementation of reforms*

Promote government information sharing, strengthen legal guarantees and establish a dynamic adjustment mechanism for reform pilots.

Enterprises in the relevant industries in Pudong New Area are advised to pay close attention to the reform measures introduced in the Overall Plan so as to fully enjoy the facilitation brought by the new measures.

You can click this link to access the full content of the Overall Plan:

http://www.gov.cn/zhengce/content/2020-11/19/content_5562629.htm

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

► **Opinions on enhancing the protection of copyright and other relevant rights (Fafa [2020] No. 42)** <http://www.court.gov.cn/fabu-xiangging-272221.html>

► **Several regulations on evidence in civil procedures for intellectual property cases (Fashi [2020] No. 12)** <http://www.court.gov.cn/fabu-xiangging-272241.html>

► **Notice regarding public opinion consultation on the “Implementation Measures of the State Administration of Foreign Exchange on Administrative Licensing Items (Discussion Draft)”** <http://www.safe.gov.cn/safe/2020/1117/17599.html>

► **PN regarding revisions to the “Annotations on Commodities and Items under the Customs Import and Export Tariff (Issue VI & VII)” (GAC PN [2020] No. 118)** http://www.gov.cn/xinwen/2020-11/16/content_5561805.htm

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