Introduction

The Law of the People's Republic of China on Tax Collection and Administration (hereinafter referred to as the “Law”), as the basic procedural law in tax matters of the country, plays an important role in enforcing tax collection and administration, regulating the tax collection and payment process, protecting national tax revenue and legitimate rights of taxpayers, and promoting economic and social development. The Law was introduced in 1992 and became effective on 1 January 1993. The Law was subsequently amended several times and the existing Law became effective from 1 May 2001. With the rapid development of the Chinese market economy, it becomes imperative to amend the Law again to respond to the practical needs and development of the overall more complex environment.

One and a half years ago, the Legislative Affairs Office of the State Council announced a discussion draft of a new revision of the Law, i.e., “Amendment to the Law (Discussion Draft)” for the purpose of seeking public opinion. However, no new Law was made final after that round of public opinion solicitation. The final revision of the Law would become more likely and sooner as the State Council recently launched the second round of public opinion solicitation on the revised Law.

On 5 January 2015, the “Revised Draft of the Law (Discussion Draft)” (hereinafter referred to as “Draft Law”) was announced by the Legislative Affairs Office of the State Council for seeking another round of public opinion. The solicitation of public opinion will be closed on 3 February 2015. This issue of China Tax & Investment News discusses amendments in the Draft Law that are worth the attention of taxpayers and taxpayers are encouraged to share their views.
Key features of the Draft Law

The Draft Law consists of 139 articles in 11 chapters. 45 articles are newly added. It made major supplements and adjustments to the existing Law, including:

Conforming to the relevant laws

► **Conform to the Administrative Coercion Law**
  - Tax interest is introduced to take up the function of late payment surcharge under the Administrative Coercion Law. The rates of tax interest shall be determined by the State Council according to the RMB basic lending rates and the reasonable range of market loan interest rates.
  - Procedures of tax administrative execution are to be improved, e.g., where tax authorities adopt tax preservation measures such as detaining commodities, merchandise or other assets of noncompliant taxpayers, they should report to directors of tax bureaus (or sub-bureaus thereof) above the county level within 24 hours and obtain approval.

► **Conform to the Amendment to the Criminal Law (VII)**
  - Tax evasion is revised to evasion of tax payment by taxpayers who make fraudulent tax filings or fail to file taxes by way of deception or concealing.
  - Taxpayers and withholding agents who fail to pay tax or underpay tax due to negligence would bear lesser legal liabilities than those who evade tax payment. Hence, the burden of taxpayers would be eased.

► **Conform to the Budget Law**
  - According to the Draft Law, any units should not stipulate tax preferential policies beyond the national unified tax system, unless stipulated by Laws, administrative regulations and the State Council.
  - For tax revenue targets assigned in violation of laws and administrative regulations, tax authorities should not implement them.

Adding in new provisions to strengthen the tax administration on natural person taxpayers

► **Specify the legal status of the taxpayer identification number (TIN) system**
  - A TIN is an exclusive and permanent numeric code compiled by tax authorities according to the national standards to identify the identity of a taxpayer including enterprise and citizen.
  - Tax authorities shall conduct tax administration through the TINs which shall cover the entire society.
  - Taxpayers should use their TINs when signing contracts/agreements, paying social insurance premiums, registering real estate and handling tax matters.

► **Specify the fundamental position of self-filing system**
  - Taxpayers and withholding agents shall calculate tax payable/withholding tax payable and file taxes on their own. They shall assume responsibilities for the authenticity and legality of their tax filings and withholding filings.
Strengthen tax collection and administration measures for natural persons

- Units and individuals making payments to natural person taxpayers should actively provide relevant payment certificates.
- The applicable scope of tax preservation measures and tax coercive measures is expanded to cover all taxpayers including natural persons.
- Tax authorities are allowed to inspect tax-related accounting books and documents of a unit from which a natural person taxpayer derives income.
- Registration authorities should not perform registration of real estate on which taxes have not been paid.

Establish a system that taxes shall have priority for repayment (hereinafter referred to as “priority right”)

If a taxpayer fails to pay taxes within the prescribed time limit, the tax authorities shall require him/her to make correction within a given time limit. If he/she fails to respond as scheduled, the tax authorities can set the priority right on his/her real estate, making taxes a priority for repayment when the real estate is disposed.

Improving the system to protect taxpayers’ rights and interests

Improve the system of taxpayers’ rights

- The Draft Law stipulates that tax authorities should carry out tax collection and administration according to statutory procedures. They should not infringe taxpayers’ legitimate rights.
- The Draft Law improves the system for deferred tax payment by delegating the approval authority to tax authorities above the county level.
- The Draft Law also introduces the system for tax payments in installments to taxpayers with difficulty.
- A tax filing correction system is newly added to allow taxpayers to correct filings after they have been submitted.

Reduce taxpayers’ burden

- The Draft Law adds new provisions that tax interest calculation shall cease under specific situations (e.g., taxpayers fail to pay taxes or withholding agents fail to remit taxes withheld due to tax preservation measures, tax coercive measures or force majeure). In addition, where taxpayers cannot timely file and pay taxes in full not due to faults of themselves or withholding agents, tax interest shall not be imposed.
- For taxpayers who actively rectify their illegal tax acts or cooperate with tax authorities on the investigation of illegal tax acts, tax interest shall be reduced or exempted.
- To reduce penalties for noncompliant taxpayers and reduce the discretion of tax authorities in administrative penalty, the Draft Law revises most of clauses involving penalties by adjusting the maximum penalties to three times. Taxpayers may be given a lesser penalty or a mitigated penalty or exempt depending on the circumstances.

Remove restrictions on application requirements for tax administrative reconsideration

The Draft Law removes the restriction that tax payment or tax payment guarantee have to be settled before the application for tax administrative reconsideration. Meanwhile, the Draft Law prescribes that taxpayers shall pay tax interest if authorities sustain the original decisions on tax treatments.
Reinforce an advance ruling system

- Taxpayers can apply with tax authorities for an advance ruling for complicated tax matters which are predictable and involving significant economic interests.
- Taxpayers who fail to pay tax or underpay tax due to compliance with the advance ruling shall be exempt from the tax payments.
- The advance ruling shall be made by tax authorities above the provincial level.

Regulating tax collection and administration acts

Regulate basic procedures for tax collection and administration

- Pursuant to the Draft Law, taxpayers’ self-calculation and self-filing shall serve as the basis for basic procedures of tax collection and administration which consist of tax filing, determination of tax amounts, pursuing collection of taxes unpaid or underpaid and dispute resolution.
- Tax collection and administration shall center about the determination of tax amounts which is stipulated in a separate chapter consisting of procedures, principles and allocation of the burden of proof related to the determination.

Regulate statute of limitations for tax collection and administration purposes

- In general, tax authorities shall determine the tax liabilities of taxpayers within five years.
- For taxpayers who fail to perform tax registration and tax filings or are subject to investigations, the period of pursuing collection of taxes is revised from an indefinite period to 15 years.
- The limitation period for pursuing collection of taxes in arrears is revised from an indefinite period to 20 years.

Strengthen the tax authorities’ capabilities to acquire tax-related information

- Information disclosure is stipulated in a separate chapter which lays out provisions on acquisition of tax-related information by tax authorities.
- The Draft Law clarifies third parties’ obligations to provide tax-related information to tax authorities, and obligations of banks and other financial institutions to submit relevant information, strengthens the system for coordination of information provision among functional government authorities, and stipulates tax authorities’ responsibility for maintaining confidentiality of tax-related information.

Improving the content in dispute resolution mechanism

Apply for tax reconsideration for disputes involving tax amounts prior to initiating legal proceedings

In case of tax disputes with tax authorities over administrative penalties involving tax amounts, taxpayers, withholding agents or tax payment guarantors should apply for administrative reconsideration before initiating any litigation. This reflects the principle of “exhaustion of administrative remedies available before filing a lawsuit”.

Encourage dispute resolution through reconciliation and mediation

Reconciliation and mediation are included in the Draft Law due to their exclusive advantage in dispute resolution, i.e., they are compromised results reached by both parties involved in tax administrative disputes under the situation that their respective interests are well taken care of.

Introduce the principle of “prohibiting adverse alteration in tax reconsideration procedure”

The Draft Law stipulates that authorities in charge of administrative reconsideration should not make administrative reconsideration decisions that will worsen the case of the applicants.
In recent years, certain substantive laws and regulations on tax matters have been amended, e.g., Corporate Income Tax (CIT) Law, Individual Income Tax (IIT) Law, Provisional Regulations on Value-Added Tax (VAT), Business Tax and Consumption Tax (CT), and Vehicle and Vessel Tax Law. However, the Law has not been keeping pace with the reform of these tax laws and the changing economy, thus, its amendment is imperative. The revisions to the Law thereby were launched in 2008. In 2013, the “Amendment to the Law (Discussion Draft)” was submitted by the State Administration of Taxation (SAT) to the State Council and announced to the public for public opinion solicitation. However, that Discussion Draft did not make significant revisions to the existing Law, but did receive a lot of attention and a high volume of valuable opinions were received.

In November 2013, the Third Plenary Session of the Eighteenth Central Committee of the Communist Party of China (CPC) decided to strengthen the reform of financial and tax system and set out an overall scheme. In June 2014, the Political Bureau of the CPC Central Committee held a meeting and approved the General Plan for Strengthening the Reform of Financial and Tax System. To implement the requirements of the reform, significant amendments of the Law were made this time and announced to the public to seek opinions.

The supplements and adjustments in the Draft Law, if finalized, would have significant implications on taxpayers. Among various revisions made in the Draft Law, the following issues may be worth the attention of taxpayers and relevant investors:

### Establishment of a TIN system

The Draft Law specifies the legal status of the TIN system. The TINs shall cover the whole society, which may imply that even natural person would have their own TINs in the future. Pursuant to the Draft Law, the TINs shall be used in various aspects:

- TINs shall be used when taxpayers sign contracts/agreements, pay social insurance premiums, register real estate and have other tax matters handled.
- Banks and other financial institutions shall record TINs in the bank accounts of taxpayers engaging in production and business operations.
- Where a unit or individual engaging in production and business operations makes payments of over RMB5,000 to another unit or individual during a tax year, the TIN of the payee shall be provided to tax authorities. Where single cash payment exceeds RMB50,000, the TIN of the payee shall be provided to tax authorities within five days.

The full coverage of the TINs would have significance for the tax collection and administration in China. The establishment of the TIN system would facilitate the reinforcement of taxpayer credibility system as well as laying a solid foundation for the formulation of Real Estate Tax Law and revisions to the IIT Law. However, it may add an administrative burden to normal business activities as more information and frequent submission would be required for tax compliance as the thresholds were set relatively low.

### Tax administration on online trading

To cope with the rapid development of online business, the Draft Law sets out certain provisions on online trading:

- A taxpayer engaging in online trading should disclose the information on its tax registration certificate or a hyperlink to its tax registration certificate in a conspicuous position on its website.
- Online trading platform operators should provide tax authorities with registration information of e-commerce traders.
- When determining tax amounts or performing tax audits, tax authorities are empowered to inspect the online trading status of organizations providing the online trading platform as well as inspecting related payment status at online payment service providers.

Remarks:
Currently, there are no specific provisions in relevant laws and regulations on whether taxes shall be imposed on online trading. The upcoming new Law would likely become the first law specifying the tax liability of online traders. The Draft Law only sets out general principles and basic framework related to the online trading; detailed provisions would be expected to be stipulated in the upcoming amendments to the Implementation Rules of the Law, VAT Law and CT Regulations. Certainly the obligations imposed on platform companies or payment service providers would create a source of information to tax authorities and could help to detect revenue lost in the internet world.

Reinforcement of an advance ruling system

An advance ruling is a written interpretation of tax laws and regulations in relation to how certain issues are to be treated for tax purposes. The main objectives of the advance ruling system are to:

- Provide taxpayers with a degree of certainty about taxation treatments based on the current tax legislation for seriously contemplated arrangements
- Promote consistency in the application of tax authorities
- Minimize disputes between tax authorities and taxpayers

Broadly speaking, the existing advance pricing agreement (APA)\(^4\) and tax compliance agreement\(^5\) shall fall into the category of advance ruling. The advance ruling is reinforced in the Draft Law which grants it legal status. The advance ruling will only be applicable to the applicants who cannot directly apply the tax law system to calculate tax payable on particularly complicated matters which are predictable and involving significant economic interests. Only tax authorities above the provincial level have the authority to issue the advance ruling. Compliance with the advance ruling will exempt taxpayers from responsibilities of payments of taxes unpaid or underpaid due to such compliance.

The Draft Law only sets out general provisions related to the advance ruling system. It is expected that the SAT would formulate and release detailed provisions to implement the system in the future.

Bringing in new control measure - tax interest

The legislation authorities redefine the legal terms of “late payment surcharge” and “tax interest” in the Draft Law. Late payment surcharge under the existing Law is in nature an interest in compensation for occupation of national tax revenue, which shall be automatically attached to any taxes in arrears and the calculation basis is currently 0.05% per day; tax payment decisions made by tax authorities would not be treated as a primary consideration in this regard. Late payment surcharge under the Administrative Coercion Law falls within the category of administrative coercive measures, which shall be imposed on the party concerned who fails to comply with administrative decisions (i.e., decisions on ordering the party to make relevant payments) within the prescribed time limit. There are conflicts between the existing Law and the Administrative Coercion Law in terms of late payment surcharge. Hence, the Draft Law introduces tax interest to take up the function of the surcharge so as to conform to the Administrative Coercion Law. Separately, the Draft Law stipulates an article imposing a late payment surcharge on taxpayers who fail to perform the tax payment according to decisions made by tax authorities. Pursuant to the Draft Law, the rates of tax interest shall be determined by the State Council according to the RMB basic lending rates and the reasonable range of market loan interest rates; while the late payment surcharge shall be imposed on a daily basis at the rate of 0.5%. In other words, the current surcharge of 0.05% per day would be changed into a different form.

Remarks:

4. Pursuant to Article 113 of the Implementation Rules of the CIT Law, an APA as stipulated in the CIT Law refers to an agreement reached between a company and the tax authorities, after the company submits its application and negotiates with the tax authorities based on the arm's-length principle, on the pricing principle and computation method applicable to its related party transactions for future years.

5. According to Guoshuifa [2011] No. 71 (i.e., the Procedures of the SAT for Large-sized Enterprise Tax Services and Administration (Trial)), the SAT and enterprise groups shall, on the basis of free will, equality, openness and mutual trust, conclude tax compliance agreements, and jointly promise the cooperation between tax authorities and enterprises in tax risk prevention and control.
In fact, the provision of tax interest has been introduced in Guoshuifa [2009] No. 26 (“Circular 2”, i.e., Implementation Measures for Special Tax Adjustments (Trial)). However, there are discrepancies between the Draft Law and Circular 2 in terms of the provision of tax interest, which are summarized in the table below:

<table>
<thead>
<tr>
<th>Item</th>
<th>Circular 2</th>
<th>Draft Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest rate</td>
<td>RMB basic lending rate on 31 December of the same tax period published by the People’s Bank of China plus a 5% mark-up</td>
<td>To be determined by the State Council according to the RMB basic lending rates and the reasonable range of market loan interest rates</td>
</tr>
<tr>
<td>Deductibility for CIT purposes</td>
<td>Non-deductible</td>
<td>Not specified</td>
</tr>
<tr>
<td>Cessation of tax interest calculation</td>
<td>Not specified</td>
<td>Under special situations (e.g., tax preservation measures, tax coercive measures and force majeure), tax interest calculation shall cease.</td>
</tr>
<tr>
<td>Tax interest not imposed</td>
<td>Not specified</td>
<td>Tax interest shall not be imposed on taxes unpaid or underpaid not attributable to faults of taxpayers or withholding agents.</td>
</tr>
</tbody>
</table>

The legislation authorities may take into account the existing tax-related laws and regulations to keep consistency and coordination in the Law and other tax-related laws and regulations.

**Statute of limitations made clear**

The Draft Law adds a new chapter of “determination of tax amounts” and sets out situations under which tax authorities shall determine the tax payable of taxpayers within five years, i.e., in other words, for cases that full information is disclosed and tax authorities do not reply, taxes cannot be collected after five years. On an equal ground, the Draft Law also states out a five-year limitation for any taxes underpaid due to mistakes made by taxpayers or withholding agents. Under the current rule, a limitation of three years is only set on cases which tax authorities have already looked at. The Draft Law appears to have broadened the scope and expanded the time limit.

More importantly, it has been the case that China does not have a statute of limitations; under the Draft Law, a statute of limitations is set at 15 or 20 years for different cases. Although it is a good move, the periods appear to be longer than international practice that generally is shorter than 10 years.

As tax legislation and tax policies in China are subject to constant changes, it may not be easy for taxpayers to keep up with policy developments and have a clear and definite understanding of their compliance situation all along. The long limitation periods could entail a substantial degree of uncertainty for taxpayers.

**Create room for remedy**

The Draft Law allows taxpayers to correct their tax filings, if necessary, after taxes have been filed. However, taxpayers should be aware that any correction of tax filings involving tax refunds shall be subject to approval of tax authorities. This would represent an increase in difficulty and potentially challenges for taxpayers wishing to claim a tax refund by correcting their tax filings. On the other hand, taxpayers may be able to use this mechanism to come clean for back taxes that they did not properly report before. This will be particularly important for companies that have expansion plans and wish to be certain on compliance positions before putting in any significant investments.

Remarks:
6. Source: [http://www.chinatax.gov.cn/n810341/n810765/n812166/n812652/c1189827/content.html](http://www.chinatax.gov.cn/n810341/n810765/n812166/n812652/c1189827/content.html)
Increase demand on disclosure of tax-related information

The Draft Law brings in new requirements on disclosure of tax-related information in various situations which include:

► Taxpayers and third parties involved in a particular tax subject matter should provide tax-related information according to relevant rules.

► Where a unit or individual engaging in production and business operations makes payments of over RMB5,000 to another unit or individual in the process of economic activities during a tax year, the amounts paid, the name and TIN of the payee should be disclosed to the tax authorities. Where single cash payment exceeds RMB50,000, the information should be provided within five days.

► Banks and other financial institutions should, to their knowledge, provide tax authorities with the accounts, account numbers and investment income of bank account holders as well as total interest and ending balance of the accounts according to the prescribed contents, formats and time limits. For a single fund transfer of over RMB50,000 by a bank account holder or cash withdrawal of over RMB50,000 within a day, they should provide relevant information for tax authorities according to relevant rules.

► Relevant government departments and authorities should, to their knowledge, provide finance and tax authorities with tax-related information such as qualifications of market players, identities of natural persons, professional qualifications, income, properties and expenditures. Detailed measures in this regard shall be separately formulated by the State Council.

The above provisions aim to strengthen the capabilities of tax authorities to acquire tax-related information and would facilitate tax authorities in conducting an inspection and investigation on tax noncompliance issues. However, this would put heavy pressure on relevant parties and may create issues on confidentiality; at the same time, it will certainly increase their administrative burden and costs for meeting the requirements. In a rapidly developing environment, the thresholds of RMB5,000 or RMB50,000 appear to be low and likely could create a huge amount of extra workload for dispatching, keeping and analyzing the data so collected.

You can make a difference

Taxpayers including natural person taxpayers should pay attention to the supplements and adjustments in the Draft Law and consider their impacts. As mentioned, the State Council is open to collect public opinions by 3 February 2015. This would be a good opportunity for taxpayers to get involved in the tax legislation earlier and express their opinions on the Draft Law by submitting their comments through the website (http://www.chinalaw.gov.cn), writing emails or letters to the legislative Affairs Office of the State Council. In any case, we will stay alert on any developments and keep you posted about any changes.

You may click this link to access full content of the Draft Law:
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