

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.

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

Tax circulars

- ▶ **Public notice (PN) regarding continuously implementing the Land Appreciation Tax (LAT) policies for reorganization and restructuring of enterprises (MOF/STA PN [2021] No. 21)**

Synopsis

To support reorganization and restructuring of enterprises, optimize the market environment, on 31 May 2021, the Ministry of Finance (MOF) and State Taxation Administration (STA) jointly released MOF/STA PN [2021] No. 21 ("PN 21") to extend the implementation of the preferential LAT policies for reorganization and restructuring of enterprises. The original preferential LAT policies were first announced via Caishui [2015] No. 5 ("Circular 5", i.e., Notice regarding LAT policies for reorganization and restructuring of enterprises) and extended via Caishui [2018] No. 57 ("Circular 57", i.e., Notice regarding continuously implementing the LAT policies for reorganization and restructuring of enterprises) which became invalid on 1 January 2021.

Key features of PN 21 are as follows:

Preferential LAT policies

Restructuring and reorganization		Remarks
Categories	Details	
Entire restructuring (整体改制)	<p>Where a non-corporate company is restructured as a limited liability company (LLC) or a joint stock company (JSC), or an LLC is restructured as a JSC, or a JSC is restructured as an LLC on an overall basis (hereinafter referred to as the “entire restructuring”), the transfer and alteration of titles of state-owned land use rights, above-ground buildings and their attachments (hereinafter referred to as the “real estates”) from the pre-restructuring company to the post-restructuring company, shall not be subject to LAT for the time being.</p> <p>The entire restructuring as stipulated in PN 21 shall <u>not result in a change of investors</u> of the original company whose rights and obligations will be inherited by the post-restructuring company.</p>	According to Circular 57, “not result in a change of investors” means that the company should be held by the same investors before and after the entire restructuring. However, the ratio of equities held by each investor can be varied.
Merger (合并)	Where two or more companies are merged into one and <u>the investors of the original companies survive</u> , the transfer and alteration of title of real estates from the original companies to the merged company shall not be subject to LAT for the time being.	According to PN 21, “the investors of the original companies survive” means that the investors of the original companies must still be investors of the merged company. However, the ratio of equities of investors before and after the merger can be varied.
Split	Where a company is split into two or more while <u>the investors are the same as those of the original company</u> , the transfer and alteration of title of real estates from the original company to the post-split companies shall not be subject to LAT for the time being.	According to PN 21, the “investors are the same as those of the original company” means that the companies should be held by the same investors before and after the split. However, the ratio of equities of each investor can be varied.
Investments	Where an entity or individual makes investments with real estates during the restructuring and reorganization, the transfer and alteration of title of real estates from the entity or individual to the investee company shall not be subject to LAT for the time being.	
Exception	Article 5 of PN 21 further clarifies that the abovementioned preferential LAT policies shall not apply if either one party involving in the restructuring and reorganization is a real estate developing company.	

Determination of deductible amounts for LAT purposes

The determination of deductible amounts paid for acquiring the land use rights for LAT purposes is specified in PN 21 as follows:

- ▶ Where a company re-transfers real estates after the restructuring and reorganization and files LAT, the deductible amounts paid for acquiring the land use rights for LAT purposes shall be determined based on the price paid for acquiring the land use rights prior to the restructuring and reorganization plus relevant expenses paid as required by the national policies.
- ▶ Where a company, upon approval, re-transfers state-owned land use rights, which were contributed as capital by the state during the company restructuring and reorganization, and files LAT, the appraised value of contributed state land use rights that is approved by the national land administration departments at the county level or above shall be treated as deductible amounts paid for acquiring the land use rights for LAT purposes. (As prescribed in Circular 57, the appraised value of contributed state land use rights should be approved by the national land administration departments at the provincial level or above.) The previous requirements for providing approval documents for contributing the land use rights as capital and the approved appraised value in the LAT filing as prescribed in Circular 57 is removed in PN 21.
- ▶ If the deductible amounts are based on invoices of real property purchases, the deductible amounts should be calculated at the original prices as indicated on the invoices of real property purchases plus an additional 5% super deduction per year (i.e., from the purchase year as indicated on the invoices to the year of transfer). (This clause is newly added in PN 21.)

Documentation requirements for eligibility for preferential LAT policies

Instead of listing documents to be provided to the tax authorities as prescribed in Circular 57 (e.g., business licenses of the transferor and transferee), PN 21 only prescribed that taxpayers eligible for the preferential LAT policies should apply for such tax preferences with the tax authorities. This shows that such procedures are further simplified under the reform of “Delegate Power, Streamline Administration and Optimize Government Services”.

Effectiveness of PN 21

Same as that of Circular 57, PN 21 extends the preferential LAT policies for another three years, i.e., from 1 January 2021 to 31 December 2023, and applies to any unsettled cases. However, PN 21 does not specify whether any relevant taxes paid prior to the promulgation of Circular 21 can be used to offset against future tax payable or refunded. It is anticipated that the subsequent implementation rules would be clarified in this regard.

Relevant taxpayers should study PN 21 carefully and assess their eligibilities for applying the preferential LAT policies. If in doubt, consultations with tax professionals are always recommended.

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

http://szs.mof.gov.cn/zhengcefabu/202106/t20210616_3719962.htm

You can click this link to access the full content of Circular 57:

<http://www.chinatax.gov.cn/chinatax/n359/c15151095/content.html>

You can click this link to access the full content of Circular 5:

<http://www.chinatax.gov.cn/n810341/n810755/c1522941/content.html>

- ▶ **PN regarding matters related to optimizing and integrating the export tax refund system and serving better the taxpayers (STA PN [2021] No. 15)**

Synopsis

To deepen the reform of “Delegate Power, Streamline Administration and Optimize Government Services” and further optimize the business environment, on 3 June 2021, the STA released STA PN [2021] No. 15 (“PN 15”) to specify matters related to optimizing and integrating the export tax refund system and better serving taxpayers.

Key features of PN 15 are as follows:

▶ Remove certain filing requirements

Taxpayers are no longer required to complete the declaration for outstanding electronic information (无相关电子信息申报) if they cannot complete the declaration for export tax refund/exemption within the prescribed deadline for not having complete or matched electronic information on their customs declaration forms. Instead, they may directly file for export tax refund/exemption once the electronic information is complete.

▶ Simplify documentation requirements for the export tax refund/exemption

To reduce the administrative burden of taxpayers, certain documentation requirements are further simplified, e.g., the registration form for foreign trade operators is no longer required for the record filing for export tax refund/exemption, etc.

▶ Revise the assessment criteria for categorization of export refund/exemption enterprises

According to STA PN [2016] No. 46 ("PN 46", i.e., PN regarding the revised "Administrative Measures of Classification of Enterprises entitled to Export Tax Refund/Exemption"), enterprises entitled to export tax refund/exemption (hereinafter referred to as the "export enterprises") are categorized into four types (i.e., 1, 2, 3 and 4) and different types of export enterprises shall be subject to differentiated tax administration and service measures.

In which, according to PN 46, an export enterprise shall be classified as Type 3 if one of the following conditions is met:

- ▶ The period from the date of its first application for export tax refund/exemption to the assessment date is less than 12 months.
- ▶ With tax credit rating C during the assessment period or tax credit rating has not yet been classified.
- ▶ Has violated regulations or rules related to export tax refund/exemption in the preceding year, but the violation was not serious enough to result in administrative sanctions of tax authorities or judicial authorities
- ▶ Other bad faith and risk situations as prescribed by tax authorities at the provincial level

PN 12 revised the second criteria as "with tax credit rating C or rating M during the assessment period or tax credit rating has not yet been classified". The new rating results shall become effective on the first day of next month, whereas any dynamic adjustments or review rating adjustments shall become effective on the next day after the adjustments are made.

PN 15 also prescribes an optimized application flow for the export tax refund/exemption, simplified procedures for the issuance of export tax refund/exemption certificates and new convenient services for export tax refund/exemption.

PN 15 became effective on its promulgation date, i.e., 3 June 2021. However, for certain areas, e.g., Jiangsu Province, Hainan Province, etc., PN 15 shall apply after the respective functions of Gold Tax Project III are implemented in those areas.

Relevant taxpayers are encouraged to read PN 15 and the STA's official interpretation of PN 15 for more information. If in doubt, consultations with tax professionals are always helpful.

You can click this link to access the full content of PN 15:

<http://www.chinatax.gov.cn/chinatax/n377/c5165307/content.html>

You can click this link to access the full content of STA's official interpretation of PN 15:

<http://www.chinatax.gov.cn/chinatax/n810341/n810760/c5165354/content.html>

You can click this link to access the full content of PN 46:

<http://www.chinatax.gov.cn/chinatax/n359/c15151095/content.html>

► **Notice regarding the 2021 Legislative Work Plan of the State Council (Guobanfa [2021] No. 21)**

Synopsis

On 27 May 2021, the General Office of the State Council released the annual legislative work plan for 2021 (hereinafter referred to as the “2021 Legislative Plan”). The 2021 Legislative Plan specifies the legislative projects in 2021 including the legislative projects to be submitted to the Standing Committee of the National People’s Congress for deliberation, the administrative regulations to be formulated or revised, and other legislative projects to be completed. Among them, some key legislative projects related to taxation and business include:

Legislative projects for deliberation

- Draft Value-added Tax (VAT) Law
- Draft Consumption Tax Law
- Draft Tariff Law
- Draft Cultural Industry Promotion Law
- Revised Draft of the Anti-monopoly Law
- Revised Draft of the Administrative Review Law

Administrative regulations to be formulated or revised

- Administrative Regulations on Registration of Market Entities
- Supervisory and Administrative Regulations on Private Equity Funds
- Provisional Administrative Regulations on Carbon Emission Permit Trading
- Provisional Regulations on Enterprise Information Publicity

Other legislative projects to be completed

Laws and regulations clean-up projects related to the transformation of government functions, reforms of “Delegate Power, Streamline Administration and Optimize Government Services” and “Separating Permits from Business Licenses”, business environment optimization, etc.

Relevant enterprises and individuals are encouraged to read the 2021 Legislative Plan for more details. We will keep an eye on any further progress and update you accordingly. Please stay tuned.

You can click this link to access the full content of the 2021 Legislative Plan:

http://www.gov.cn/zhengce/content/2021-06/11/content_5617194.htm

► **Notice regarding the 2020 assessment of National Technology Business Incubators (TBIs) (Guokehuozi [2021] No. 102)**

Synopsis

According to Caishui [2018] No. 120 (“Circular 120”, i.e., Notice regarding tax policies for TBIs, university science parks and maker spaces), from 1 January 2019 to 31 December 2021, real estates and lands used by qualifying TBIs or rented, provided for free to their incubated targets (i.e., business start-ups) shall be exempt from Real Estate Tax and Urban Land Usage Tax, while the income derived by qualifying TBIs from provision of incubation services to their incubated targets shall be exempt from VAT.

On 8 June 2021, the Torch High Technology Industry Development Center of the Ministry of Science and Technology (MOST) released Guokehuozi [2021] No. 102 (“Circular 102”) to announce the commencement of 2020 National TBIs assessment.

According to Circular 102, the assessment work will be conducted based on the 2020 statistical data of TBIs and the 2020 Work Summary submitted by TBIs. The National TBIs shall submit the 2020 Work Summary via the Torch Statistical Survey Information System of the MOST (<https://tyrz.chinatorch.org.cn/hjjsmp/a/login#tj>) by 30 June 2021.

Related parties are encouraged to read Circular 102 for more details and prepare for the assessment work.

You can click this link to access the full content of Circular 120:

<http://www.chinatax.gov.cn/n810341/n810755/c3855604/content.html>

You can click this link to access the full content of Circular 102:

<http://www.chinatorch.gov.cn/kjb/tzgg/202106/2efd463de62e4242b69ec1311c5edf33.shtml>

Customs circular

► **Order on the “Regulations of the Customs of the People’s Republic of China (PRC) on Procedures for Handling Administrative Penalty Cases” (GAC Order [2021] No. 250)**

Synopsis

On 15 June 2021, the General Administration of Customs (GAC) released the “Regulations of the Customs of the PRC on Procedures for Handling Administrative Penalty Cases” (hereinafter referred to as “Regulations”) via GAC Order [2021] No. 250.

The Regulations cover several sections including general provisions, case investigation, administrative disposal decision, hearing procedures, simplified procedures, quick disposal and execution of disposal decisions. Among them, some noteworthy items are as follows:

General provisions

- Information on the filing basis, implementation procedures and relief channel of customs administrative penalty shall all be publicized.
- The customs shall record the whole process of initiation, investigation, evidence collection, review, decision, delivery and execution of administrative penalty in the form of documentation, audio, video, etc. and keep it on file.
- The types of evidence used by the customs in handling administrative penalty cases include documentary evidence, physical evidence, audio-visual materials, electronic data, witness testimony, statements of the parties, expert opinions, inspection transcripts, and on-site transcripts. Evidence must be verified before it can be used as the basis for determining the facts of the case.

Case investigation

- Law enforcement personnel shall take the initiative to present their law enforcement certificates to the parties or relevant personnel in the course of investigation or inspection. The parties or relevant personnel concerned shall assist and cooperate with the customs investigation or inspection, and shall not refuse or obstruct the investigation.
- In order to find out the facts, it is necessary to carry out testing, inspection, quarantine and technical appraisal on the special matters in the case, which shall be carried out by the customs or an agency entrusted by the customs in accordance with law.

Administrative disposal decision

- Where the party concerned has sufficient evidence to prove that there is no subjective fault, no administrative penalty shall be imposed, except as otherwise prescribed by law.
- Before making a decision on administrative penalty or no administrative penalty, the customs shall inform the parties of the contents, facts, reasons and basis of the proposed administrative penalty or no administrative penalty, and inform the parties of their rights to state, defend and request a hearing in accordance with law.

Hearing procedures

- The hearing shall be organized by the customs department responsible for the legal review of administrative penalty cases.

- ▶ In the case that the party concerned requests a hearing, the request shall be submitted to the customs within five working days from the date when the customs informs the right of the hearing.
- ▶ After the hearing, the customs shall review and make a decision in accordance with the record of the hearing.

Simplified procedures and quick disposal

- ▶ Where the illegal facts are conclusive and there is a legal basis for imposing a warning or a fine of less than RMB200 on a citizen or less than RMB3000 on a legal entity or organization, the customs may apply simplified procedures to make an administrative penalty decision on the spot.
- ▶ For administrative penalty cases that are not applicable to simplified procedures while the facts are clear and the parties have applied in writing, voluntarily admit their mistakes and accept punishment, the customs can dispose the cases by simplifying the procedures of evidence collection, review and approval.

Execution of disposal decisions

- ▶ After the customs makes a decision on administrative penalty, the party concerned shall perform it within the time limit specified in the administrative penalty decision.
- ▶ In the case that the party concerned fails to perform the administrative penalty decision within the time limit, the customs may impose a fine or take other enforcement measures.

The Regulations shall become effective on 15 July 2021. Relevant parties are advised to read the Regulations 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 the Regulations:

<http://www.customs.gov.cn/customs/302249/2480148/3715256/index.html>

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

- ▶ **Notice regarding several catalogs for vehicle-related preferential tax treatments including the "Catalog of Energy Saving & New Energy Vehicles Eligible for Preferential Vehicle and Vessel Tax Policies (27th Batch)", "Catalog of New Energy Vehicles Eligible for Vehicle Purchase Tax Exemption (43rd Batch)", etc. (MIIT PN [2021] No. 16)**
https://www.miit.gov.cn/zwgk/zcwj/wjfb/gg/art/2021/art_9200db5898584b88a388e3bdb69cd288.html
- ▶ **Notice regarding regulating certain matters related to regulating wealth management products for cash (Yinbaojianfa [2021] No. 20)**
<http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=989851>
- ▶ **Notice regarding the "5G Application Scheme in Energy Filed" (Fagainengyuan [2021] No. 807)**
https://www.ndrc.gov.cn/xxgk/zcfb/tz//202106/t20210611_1283163.html
- ▶ **Notice regarding public opinion consultation on the "Measures for Supervision of the Behaviors of Major Shareholders of Banking and Insurance Institutions (Trial)" (Discussion Draft)**
<http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=990589>
- ▶ **Notice regarding the "Administrative Measures on Special Funds for the Development of Small and Medium-sized Enterprises" (Caijian [2021] No. 148)**
http://jjs.mof.gov.cn/zhengcefaui/202106/t20210617_3720730.htm
- ▶ **PN regarding adjusting the catalog of prohibited commodities in processing trade (MOFCOM/GAC PN [2021] No. 12)**
<http://www.mofcom.gov.cn/article/b/c/202106/20210603070389.shtml>
- ▶ **PN regarding mutual recognition of self-issued preferential certificates of origin for China's exports to Thailand and Mauritius (GAC PN [2021] no. 43)**
<http://www.customs.gov.cn/customs/302249/2480148/3715028/index.html>
- ▶ **PN regarding revised criteria of origin under the Mainland and Macao Closer Economic Partnership Arrangement (CEPA) (GAC PN [2021] No. 42)**
<http://www.customs.gov.cn/customs/302249/2480148>

Contact us

For more information, please contact your usual EY contact or one of the following EY's China tax leaders.

Author - China Tax Center

Jane Hui
+852 2629 3836
jane.hui@hk.ey.com

Greater China Tax Leader

Henry Chan
+86 10 5815 3397
henry.chan@cn.ey.com

Our tax leaders by market segment and service areas

Martin Ngai (China North)

+86 10 5815 3231
martin.ngai@cn.ey.com

Patricia Xia (China Central)

+86 21 2228 2878
patricia.xia@cn.ey.com

Ho Sing Mak (China South)

+86 755 25028289
Ho-Sing.Mak@cn.ey.com

David Chan (Hong Kong SAR/Macau SAR)

+852 2629 3228
david.chan@hk.ey.com

Heidi Liu (Taiwan)

+886 2 2757 8888
heidi.liu@tw.ey.com

Carrie Tang

Business Tax Services
+86 21 2228 2116
carrie.tang@cn.ey.com

Vickie Tan

Global Compliance and Reporting
+86 21 2228 2648
vickie.tan@cn.ey.com

Becky Lai

Tax Policy
+852 2629 3188
becky.lai@hk.ey.com

Andrew Choy

International Tax and Transaction Services
+86 10 5815 3230
andrew.choy@cn.ey.com

Travis Qiu

ITTS - Transfer Pricing
+86 21 2228 2941
travis.qiu@cn.ey.com

Jesse Lv

ITTS - Transaction Tax
+86 21 2228 2798
jesse.lv@cn.ey.com

Kevin Zhou

Indirect Tax - VAT
+86 21 2228 2178
kevin.zhou@cn.ey.com

Bryan Tang

Indirect Tax - Global Trade
+86 21 2228 2294
bryan.tang@cn.ey.com

Patricia Xia

Tax Technology
and Transformation
+86 21 2228 2878
patricia.xia@cn.ey.com

Paul Wen

People Advisory Services
+852 2629 3876
paul.wen@hk.ey.com

Catherine Li

Financial Services
+86 10 5815 3890
catherine.li@cn.ey.com

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