

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 the administration and collection on certain Corporate Income Tax (CIT) related matters (STA PN [2021] No. 17)**

Synopsis

To further promote the reform of “Delegate Power, Streamline Administration and Optimize Government Services”, the State Taxation Administration (STA) released STA PN [2021] No. 17 (“PN 17”) on 22 June 2021 to clarify certain CIT related matters.



Key feature of PN 17 are as follows:

Items	Detailed clarifications made in PN 17
CIT deduction for charitable donations	<ul style="list-style-type: none"> ▶ Any freight, insurance, labor costs, etc. related to qualified non-monetary charitable donations made by an enterprise and recorded on charitable donation invoices issued by qualifying charitable social organizations or government authorities can be deductible as qualified charitable donations for CIT purposes (i.e., subject to a cap at 12% of its annual profit with the excess amount carried forward to maximum the following three years.) ▶ If above-mentioned costs are not recorded on invoices for charitable donation, they can still be deductible for CIT purposes in the current year as expenses in the respective categories.
Convertible debts ¹	<p><u>For purchasers:</u></p> <ul style="list-style-type: none"> ▶ Interest derived in the holding period of convertible debts according to the agreement shall be subject to CIT according to the prevailing CIT rules. ▶ Where the convertible debts together with their receivable interest being converted into shares, the receivable interest shall be subject to CIT as interest received in the current period regardless of whether revenue is recognized for accounting purposes. ▶ After the conversion, the investment costs for future CIT purposes shall be calculated as follows: Investment costs = Purchase price for convertible debts + any receivable interest + relevant taxes paid <p><u>For issuing enterprises:</u></p> <ul style="list-style-type: none"> ▶ Interest paid for convertible debts is deductible for CIT purposes. ▶ Where the convertible debts and payable interest are converted into shares, the payable interest shall be deemed as paid and is deductible for CIT purposes.
Cross-border hybrid investments	<p>Cross-border hybrid investments engaged by overseas investors in China that meet the criteria as prescribed in Article 1² of STA PN [2013] No. 41 ("PN 41", i.e., PN regarding CIT treatments for enterprises engaging in hybrid investments) shall apply to the CIT treatments as prescribed in Article 2³ of PN 41, except for those fall into both of the following situations, which shall be considered as dividend and is disallowed for CIT deduction:</p> <ul style="list-style-type: none"> ▶ The overseas investor and the domestic investee in China are related; and ▶ The resident jurisdiction of the overseas investor considers such investment income as equity investment income and does not levy CIT on it.
CIT treatments for assets of enterprises that are switched to adopt actual basis from deemed basis for CIT purposes	<ul style="list-style-type: none"> ▶ Where invoices for purchases of such assets are available, the tax basis shall be the amount indicated on the invoices. Where invoices are not available, the tax basis of the assets can be determined according to contracts for the purchases of assets, the relevant payment slips or accounting ledgers, etc. ▶ For assets that were put into use during the period when an enterprise was taxed on a deemed basis, the enterprise should calculate the depreciation/amortization for CIT deduction purposes based on the remaining life of the assets (i.e., the prescribed life of such assets as prescribed in the tax rules subtracting the used life).

Items(cont'd)	Detailed clarifications made in PN 17(cont'd)
Antiques and art works	For antiques and art works purchased by enterprises and used for collection, display or value preservation and appreciation purposes, they should be recognized as investments and no depreciation/amortization is allowed for CIT purposes.
Financial subsidies granted by the government authorities	<ul style="list-style-type: none"> ▶ The following subsidies granted to enterprises should be recognized by the enterprises on an accrual basis: <ul style="list-style-type: none"> ▶ Financial subsidies granted according to quantities or amount of sales of goods or services by the government authorities; and ▶ Financial subsidies paid by the government authorities which constitute part of the purchase price of goods or services. ▶ Except for the above, other financial subsidies, e.g., tax refund, compensation, grant-in-aid, etc. received from the government authorities should be recognized on a cash basis.

PN 17 shall apply to the 2021 annual CIT filing and onwards.

¹ Convertible debt is an investment that “converts” into common stocks after a certain holding period at an agreed price and date.

² According to Article 1 of PN 41, enterprises’ hybrid investment businesses refer to the investment businesses that have characteristics of both equity and debt. The hybrid investment businesses that meet all of the following conditions are eligible for the CIT treatment as prescribed in Article 2 of PN 41 (i.e., remark 3):

- ▶ Upon accepting the investment, the investee enterprise shall pay interest on a regular basis (or pay a minimum interest, fixed profit, or fixed dividend on a regular basis, the same as below) according to the rate stated in the investment contract or agreement;
- ▶ With a clear investment period or specific investment conditions, and after expiry of the investment term or the specific investment conditions satisfied, the investee enterprise shall redeem the investment or repay the principal;
- ▶ The investor does not have the ownership of net assets of the investee enterprise;
- ▶ The investor does not have the right to vote or the right to stand for election; and
- ▶ The investor does not participate in the daily operations of the investee enterprise.

³ According to Article 2 of PN 41, enterprises’ hybrid investment businesses that meet the criteria as stated in remark 2 shall be subject to the following CIT treatments:

- ▶ The investor shall recognize the interest income as taxable income of the current period on the day the interest should be paid by the investee enterprise. In the meantime, the investee enterprise shall recognize such interest expenses on the same day, and such expenses are deductible for CIT purposes up to an amount not exceeding the one calculated based on an interest rate charged by a financial institution.
- ▶ As for the investment redeemed by the investee enterprise, both the investor and the investee shall recognize the difference between the ransom price and the cost of investment as gain or loss from the debt restructuring, and include such amount in their taxable income for the current period.

You can click this link to access the full content of PN 17:

<http://www.chinatax.gov.cn/chinatax/n362/c5165844/content.html>

You can click this link to access the full content of STA’s official interpretation on PN 17:

http://www.gov.cn/zhengce/zhengceku/2021-06/27/content_5621093.htm

You can click this link to access the full content of PN 41:

<http://www.chinatax.gov.cn/n810341/n810755/c1145382/content.html>

► **Notice regarding continuously implementing the preferential CIT policies in the Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone (Caishui [2021] No. 30)**

Synopsis

As approved by the State Council, the Ministry of Finance (MOF) and STA jointly released Caishui [2021] No. 30 ("Circular 30") on 27 May 2021 to extend the preferential CIT policies in the Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone (hereinafter referred to as "Qianhai") as prescribed in Caishui [2014] No. 26 ("Circular 26", i.e., Notice regarding the preferential CIT policies and preferential catalogues for the Guangdong Hengqin New Area, the Fujian Pingtan Comprehensive Pilot Zone and Qianhai).

Key features of Circular 30 are as follows:

Preferential CIT policy	Qualifying taxpayers	Remarks
Qualifying enterprises established in Qianhai (i.e., areas covered in the Overall Development Plans for Qianhai approved by the State Council in August 2010) engaging in encouraged industries are subject to a reduced CIT rate of 15%.	<p>Qualifying enterprises should meet both of the following criteria:</p> <ul style="list-style-type: none"> ► Engaging in encouraged industries as prescribed in the preferential CIT catalogues in Qianhai, i.e., Attachment of Circular 30; and ► Their core businesses derived from the encouraged industries account for more than 60% of their total income. <p>However, even both the above-mentioned criteria are met, the reduced CIT rate of 15% only applies to:</p> <ul style="list-style-type: none"> ► Income allocated to the head office and its branch(es) located in Qianhai; or ► Income allocated to the branch(es) located in Qianhai if the head office is outside of Qianhai. <p>The allocation of income between the head office and its branches with cross-region operations shall be referred to the prevailing CIT policies.</p>	<ul style="list-style-type: none"> ► The minimum ratio of core businesses has been reduced from 70% (as prescribed in the previous Circular 26) to 60% which is the same with those of the prevailing preferential tax rules for various locations, e.g., Hainan Free Trade Port. ► The rule for the application of preferential CIT treatment for establishments inside/outside Qianhai is similar to the one for Hainan Free Trade Port.

Where tax authorities have difficulties in determining whether the core businesses of enterprises comply with the requirements prescribed in preferential CIT catalogues, they can seek for opinions from Shenzhen municipal people's government or the authorized subordinates.

Circular 30 is valid from 1 January 2021 to 31 December 2025.

In addition, as announced by the official Wechat account of Pingtan Comprehensive Pilot Zone (hereinafter referred to as "Pingtan"), the preferential CIT treatment for Pingtan was also extended by the Central government from 1 January 2021 to 31 December 2025, but the full contents of the circular were not yet announced to the public. We will keep an eye on any further developments and advise you accordingly; please stay tuned.

You can click this link to access the full content of Circular 30:

https://mp.weixin.qq.com/s?_biz=MzU5MjA3Mzc0OQ==&mid=2247526894&idx=1&sn=3c3a715e384b7c30948e6c2e17c141ff&chksm=fe276c94c950e582b6c3c7ef442e650351d3d8b46afb5099d5f66a83c2bba4efe93f33e94171&mpshare=1&scene=1&srcid=0624EQHnwlaURG7k1XI1OuNt&sharer_sharetime=1624582573049&sharer_shareid=a00c3885879003056cfc3f42c64cc4ee&exportkey=A0qVFYC3bDL8mZt6e85dFKs%3D&pass_ticket=4ja99nNy5uBY1jisdejSlstTBjai8%2Bjwr9UN4maygQpp8H3ksBRRtL%2FzOYighuvv&wx_header=0#rd

You can click this link to access the full content of Circular 26:

http://ftz.qd.gov.cn/csl/content/post_918988.html

You can click this link to access the full content of post by Pingtan Comprehensive Pilot Zone:

https://mp.weixin.qq.com/s/9_Z6GCnreG539fjVal4cbA

► **Decision on revising the “Measures for the Trial of Major Tax Cases” (STA Order [2021] No. 51)**

Synopsis

In order to continuously optimize tax enforcement methods and further improve the quality of trial of major tax cases, on 7 June 2021, the STA released the “Decision on revising the ‘Measures for the Trial of Major Tax Cases (‘Measures’)’” via STA Order [2021] No. 51 (“Order 51”).

Some key revisions to the Measures are as follows:

Purpose of formulation

The purpose of formulation is revised to: “The Measures are hereby formulated in accordance with the Law of the People’s Republic of China (PRC) on Administrative Penalties and the Law of the PRC on the Administration of Tax Collection to implement the ‘Opinions on further deepening the reform of tax collection and administration’, promote the scientific and democratic decision-making process of tax authorities, strengthen internal power restriction, optimize the enforcement of tax law, and protect the legitimate rights and interests of tax administrative counterparts.”

Confidentiality

Article 4 concerning confidentiality provisions is revised to: “The personnel participating in the trial of major tax cases shall strictly abide by the state confidentiality provisions and work disciplines, and shall maintain the confidentiality of business information, personal privacy and personal information of tax administrative counterparts in accordance with law.”

Scope of trial

The scope of trial of major tax cases is adjusted to further optimize the legal environment of taxation. Cases under any of the following circumstances shall not fall within the trial scope of major tax cases:

- A case has been filed on tax violations by public security organs;
- A case has not been filed on tax violations by public security organs, but the party under investigation is unreachable and is suspected of committing a crime;
- Other circumstances specified by the STA.

Trial period

Paragraph 2 of Article 18 is revised to “The time spent on the supplementary investigation, the request for a higher-level authority’s advice or the competent authority’s opinion and the submission of the proposed disposal opinion to the trial committee of the higher-level tax bureau for record-filing shall not be included in the trial period.”

In addition, a provision related to holidays is added: “In the case that the last day of the trial period as stipulated is a statutory holiday, the day following the expiration of the holiday shall be the last day of the period; where there are three or more consecutive statutory holidays within the period, the period shall be postponed accordingly.

The revised Measures shall become effective on 1 August 2021. Relevant parties are advised to read Order 51 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 Order 51:

<http://www.chinatax.gov.cn/chinatax/n810341/n810825/c101434/c5165310/content.html>

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

<http://www.chinatax.gov.cn/n810341/n810755/c1414741/content.html>

Customs circular

► **PN regarding certain matters related to the determination of the dutiable value of imported goods by using formulae (GAC PN [2021] No. 44)**

Synopsis

To promote the reform on tax collection and administration, on 18 June 2021, the General Administration of Customs (GAC) released GAC PN [2021] No. 44 (“PN 44”) to clarify certain matters related to the determination of the dutiable value of imported goods by using formulae.

Key features of PN 44 are as follows:

- ▶ PN 44 applies to import sales contracts in which the settlement prices are to be calculated according to agreed formulae specifying in the contracts instead of agreed contract prices. The settlement prices refer to the total amount of money actually paid or payable for purchasing goods.
- ▶ For imported goods that meet all of the following criteria, the dutiable value shall be determined based on the formulae confirmed in the contracts:
 - ▶ The formulae were specified in writing before the goods arrived in the PRC or the domestic sales of bonded goods.
 - ▶ The determination of settlement prices is subject to objective conditions and factors that could not be controlled by the buyers and sellers.
 - ▶ The settlement prices can be determined according to the formulae specifying in contracts within 6 months upon the customs declaration for imported goods.
 - ▶ The settlement prices meet the criteria stipulated in the Valuation Measures of the PRC for Determining the Dutiable Value of Import and Export Goods.
- ▶ For imported goods with settlement prices to be determined according to formulae, taxpayers should submit the Customs Filing Form for Formula-pricing Contract with the Customs in charge before the first settlement of goods importation or the domestic sales. The Customs in charge shall complete the record filing within three working days upon receiving the relevant materials.
- ▶ Taxpayers should provide documents related to the settlement prices of imported goods to the Customs in charge within 30 working days once the settlement prices are determined.

PN 44 also clarified the documents to be provided for record-filing, regulations on record filing formalities and requirements on filling in the customs declaration, etc.

PN 44 shall become effective from 1 September 2021, GAC PN [2015] No. 15 ("PN 15", i.e., PN regarding certain matters related to determining dutiable values of imported goods by formulae) will be revoked simultaneously. Related parties are encouraged to read PN 44 for more details.

You can click this link to access the full content of PN 44:

<http://www.customs.gov.cn/customs/302249/2480148/3729277/index.html>

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

<http://www.customs.gov.cn/customs/302249/302266/302267/356203/index.html>

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

- ▶ **Provisions on Banning the Entry into the Securities Market (CSRC Order [2021] No. 185)**
http://www.csrc.gov.cn/pub/zjhpublic/zjh/202106/t20210618_399995.htm
- ▶ **Administrative regulations on the employment qualifications of directors, supervisors and senior management personnel of insurance companies (CBIRC Order [2021] No. 6)**
<http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=991222>
- ▶ **PN regarding public opinion consultation on the "Administrative Measures for Related-Party Transactions of Banking and Insurance Institutions (Discussion Draft)"**
<http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=991218&itemId=951&generaltype=2>
- ▶ **Notice regarding the issuance of a new version of permits for banking and insurance institutions (Yinbaojianbanfa [2021] No. 75)**
<http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=991859>
- ▶ **PN regarding 76 industry standards including the "Regulations on the Inspection of Imported Recycled Iron and Steel Raw Materials" (GAC PN [2021] No. 45)**
<http://www.customs.gov.cn/customs/302249/2480148/3729284/index.html>

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