

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.

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Tax circulars

- Supplementary Public Notice (PN) Regarding Matters Related to the Record-filing with Tax Authorities for Outbound Remittance under Service Trade Items (STA/SAFE PN [2021] No. 19)

Synopsis

In order to continuously optimize the business environment, on 29 June 2021, the State Taxation Administration (STA) and State Administration of Foreign Exchange (SAFE) jointly released STA/SAFE PN [2021] No. 19 ("PN 19") as a supplement to the prevailing STA/SAFE PN [2013] No. 40 ("PN 40", i.e., PN regarding certain issues related to the record filing with tax authorities for foreign exchange payment under service trade items).



Key features of PN 19 are as follows:

- For multiple outbound remittances under one contract, the applicant is only required to complete record filing with the supervising tax authority once before the first remittance is made.
- The following remittances and payments are exempt from record filing with tax authorities:
 - Outbound remittances for non-trade and non-business operational payments by the organizations, public institutions, and social organizations funded by the fiscal budget.
 - Reinvestments made by foreign investors with their legitimate income derived from domestic direct investments (replacing the clause requiring record filing for any foreign investor reinvests in China with legitimate income derived from domestic direct investments that exceeds USD50,000 for each payment as prescribed in the prevailing PN 40).
- An applicant may choose to complete the record filing with the supervising tax authority online or manually with the tax service counter.

PN 19 become effective on its promulgation date, contents of PN 40 contradicted with PN 19 were replaced by that of PN 19 accordingly.

You can click this link to access the full content of PN 19:

<http://www.chinatax.gov.cn/chinatax/n810341/n810825/c101434/c5166113/content.html>

You can click this link to access the full content of PN 40:

<http://www.chinatax.gov.cn/n810341/n810755/c3526427/content.html>

- ▶ PN regarding the effectiveness and enforcement of the “Agreement between the People’s Republic of China and the Kingdom of Spain for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance” and its protocol (STA PN [2021] No. 16)

Synopsis

On 21 June 2021, the STA released STA PN [2021] No. 16 (“PN 16”) announcing the effectiveness and enforcement of the “Agreement between the People’s Republic of China (PRC) and the Kingdom of Spain (Spain) for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance” (hereinafter referred to as the “new PRC-Spain DTA”) and its protocol, which were concluded on 28 November 2018. The new PRC-Spain DTA and its protocol became effective on 2 May 2021 and applies to:

- Matters related to taxes not withheld at source, for taxation years beginning on or after 2 May 2021.
- Other tax-related matters on or after 2 May 2021.

By the effectiveness of the new PRC-Spain DTA, the previous Agreement between the PRC and Spain for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance (hereinafter referred to as the “1990 PRC-Spain DTA”) signed on 22 November 1990 was replaced simultaneously.

Key features of the New PRC-Spain DTA include:

Permanent establishment (PE)

Same as the 1990 PRC-Spain DTA, the new PRC-Spain DTA has included paragraphs regarding construction PE and service PE with slight changes:

Type of PEs	New PRC-Spain DTA	1990 PRC-Spain DTA
Construction PE	A building site, or construction, assembly or installation project, but only if such site or project lasts more than <u>twelve months</u> .	A building site, a construction, assembly or installation project <u>or supervisory activities in connection therewith</u> , but only where such site, project or activities continue for a period of more than <u>six months</u> .
Service PE	An enterprise provides services, e.g., consulting services, through employees or other personnel employed, but only for activities of this nature (for the same project or associated projects) in a Contracting State for a period or periods exceeding in the aggregate <u>183 days in any 12-month period</u> .	The furnishing of services, including consultancy services, by an enterprise of a Contracting State through employees or other engaged personnel in the other Contracting State, provided that such activities continue for the same project or a connected project for a period or periods aggregating more than <u>six months within any twelve-month period</u> .

Also, Article 5.6(2) was newly added to specify circumstances where an agent acting on behalf of a company of the other contracting state should not be considered as an independent agent.

Withholding tax (WHT) rates

Dividends ¹	5%/10%/exempt
Interest ²	10%/exempt
Royalties	10%

According to the protocol of the new PRC-Spain DTA, where the tax rate limitation is lower than the tax rate stipulated by the domestic law of a Contracting State where the income occurs, the above-mentioned limited tax rate shall apply directly and shall not be subject to a procedure of “refund after collection”.

Capital gains

- Land-rich company - Gains derived by a resident of a Contracting State from the alienation of shares or comparable interests deriving more than 50% of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State. In determining that percentage, immovable property used by a company for exercising its business will not be taken into account.
- Non-land-rich company - Gains derived by a resident of a Contracting State from the alienation of shares, other than shares in which there is substantial and regular trading on a recognized stock exchange provided that the total of the shares alienated by the resident during the fiscal year in which the alienation takes place does not exceed 3% of the quoted shares, of a company which is a resident of the other Contracting State may be taxed in that other Contracting State if the alienator, at any time during the 365 days preceding the alienation, held directly or indirectly, at least 25% of the capital of that company.

Methods for elimination of double taxation

In the PRC, double taxation shall be eliminated in the following ways:

- Where a resident of the PRC derives income from Spain, the amount of tax on that income payable in Spain in accordance with the provisions of the new PRC-Spain DTA (except to the extent that these provisions allow taxation by Spain solely because the income is also income derived by a resident of Spain) may be credited against Chinese tax imposed on that resident. The amount of the credit, however, shall not exceed the amount of Chinese tax on that income computed in accordance with taxation laws and regulations of the PRC.
- Where the income derived from Spain is a dividend paid by a company which is a resident of Spain to a company which is a resident of the PRC and which owns not less than 20% of the shares of the company paying the dividend, the credit shall take into account the tax paid to Spain by the company paying the dividend in respect of its income.

Principal purposes test (PPT) rule

To prevent treaty shopping, a PPT rule is newly added (i.e., Article 24) to the new PRC-Spain DTA.

Under the PPT rule, tax benefits otherwise granted under the PRC-Spain DTA will be denied if it is reasonable to conclude that one of the principal purposes of an arrangement or transaction is to secure a benefit under the treaty, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the PRC-Spain DTA.

Investors from Spain as well as go-global enterprises in the PRC are suggested to read the new PRC-Spain DTA and consider the impacts that may have on their existing and proposed business structure.

¹ According to the new PRC-Spain DTA, if the beneficial owner (shall be a company other than partnership) directly holds at least 25% of the capital of the company paying the dividend during the 365-day period including the dividend payment date, the WHT rate shall be 5%. In all other cases, the WHT rate shall be 10%. However, dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State shall be exempt from tax in the first-mentioned State if the beneficial owner of the dividends is the other Contracting State or political subdivisions, local authorities thereof, or the Central Bank of the other Contracting State or any entity the capital of which is wholly owned directly or indirectly by the other Contracting State.

² According to the new PRC-Spain DTA, if the beneficial owner of the interest is a resident of the other Contracting State, the WHT rate shall be 10%. However, the WHT may be exempt if it is paid to the other Contracting State or political subdivisions, local authorities thereof, the Central Bank of the other Contracting State, or any entity the capital of which is wholly owned directly or indirectly by the other Contracting State, or paid on loans guaranteed or insured by the other Contracting State, or political subdivisions, local authorities thereof, the Central Bank of the other Contracting State or any entity the capital of which is wholly owned directly or indirectly by the other Contracting State.

You can click this link to access the full content of PN 16:

<http://www.chinatax.gov.cn/chinatax/n810341/n810825/c101434/c5165841/content.html>

You can click this link to access the full content of STA's official interpretation of PN 16:

<http://www.chinatax.gov.cn/chinatax/n810341/n810760/c5165842/content.htm>

You can click this link to access the full content of the new PRC-Spain DTA:

<http://www.chinatax.gov.cn/n810341/n810770/c3941888/content.html>

You can click this link to access the full content of the 1990 PRC-Spain DTA:

www.chinatax.gov.cn/n810341/n810770/c1153002/part/1153003.pdf

- ▶ PN regarding the revised “Administrative Measures for Value-added Tax (VAT) Refund for the Purchase of Domestic-manufactured Equipment by Research and Development (R&D) Institutions” (STA PN [2021] No. 18)

Synopsis

In order to encourage scientific R&D and facilitate the VAT refund for R&D institutions, the STA revised the “Administrative Measures for VAT Refund for the Purchase of Domestic-manufactured Equipment by R&D Institutions” (hereinafter referred to as the “Administrative Measures”) and released the revised version via STA PN [2021] No. 18 (hereinafter referred to as “PN 18”) on 22 June 2021.

Key changes in the revised Administrative Measures are as follows:

- Overdue declaration of tax refund is now allowed

Where a R&D institution fails to declare the tax refund within the prescribed time limit, it can still declare that by providing all the relevant documents and electronic information as stipulated by the provisions of Article 4 of MOF/STA PN [2020] No. 2 (“PN 2”, i.e., PN regarding VAT policies for the leasing of state-owned farmland, goods and services export tax refund, etc.) (Article 11 of PN 18)

- The expiration date is extended

The revised Administrative Measures became effective on 1 January 2021 and the expiration date is extended from 31 December 2020 to 31 December 2023.

Relevant R&D institutions are advised to read the Administrative Measures for more details and declare tax refunds in accordance with relevant regulations. If in doubt, consultations with professionals are always recommended.

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

<http://www.chinatax.gov.cn/chinatax/n359/c5166025/content.html>

You can click this link to access the full content of PN2:

<http://www.chinatax.gov.cn/chinatax/n810341/n810755/c5143078/content.html>

Business circular

- ▶ Notice regarding the “Implementation Plan of the Ministry of Human Resource and Social Security (MOHRSS) for Fully Rolling out the Reform of ‘Separating Permits from Business Licenses’ Nationwide” and the “Implementation Plan of the MOHRSS for Further Enhancing the Pilot Reform of ‘Separating Permits from Business Licenses’ in Pilot Free Trade Zones (PFTZs)” (Renshebufa [2021] No. 43)

Synopsis

To fully implement the reform of “Separating Permits from Business Licenses”, on 24 June 2021, the MOHRSS released Renshebufa [2021] No. 43 (“Circular 43”), announcing the implementation plan for fully rolling out the reform of “Separating Permits from Business Licenses” nationwide and further enhancing the pilot reform of “Separating Permits from Business Licenses” in PFTZs.

Circular 43 clarified the implementation issues for conducting eight business-related licensing matters nationwide as well as the pilot reform on three business-related licensing matters in PFTZs.

According to Circular 43, the reform on approval for the establishment, split, merger, change and cessation of Sino-foreign cooperative vocational training institutions shall be conducted based on notification and commitment mechanism nationwide. Where the institutions promised to become qualified within prescribed period, the approval result shall be given on spot after the formal examination. Relevant information for the approval is specified in Circular 43, including the competent departments, approval criteria, lists of application documents, etc.

Related parties are encouraged to read Circular 43 for more details.

You can click this link to access the full content of Circular 43:

http://www.mohrss.gov.cn//xxgk2020/fdgdgknr/zcfg/gfxwj/zh/202106/t20210629_417310.html?keywords
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Customs circulars

- ▶ Notice regarding public opinion consultation on the “Measures of the Customs of the PRC for the Administration of Enterprise Credit (Discussion Draft)”

Synopsis

In order to advance the construction of the social credit system, establish an enterprise import and export credit management system, and promote trade safety and facilitation, the General Administration of Customs (GAC) revised the “Measures of the Customs of the PRC for the Administration of Enterprise Credit” (hereinafter referred to as the “Measures”) and released the Discussion Draft to seek public opinion on 18 June 2021.

Some key changes made in the Discussion Draft are as follows:

Items	Stipulations of the Measures	Stipulations of the Discussion Draft
Enterprise's classification	According to enterprises' credit status, enterprises are classified into: <ul style="list-style-type: none">• Authorized enterprises (认证企业, including general authorized enterprises (一般认证企业) and advanced authorized enterprises (高级认证企业))• General credit enterprises (一般信用企业)• Enterprises acting in bad faith (失信企业)	According to enterprises' credit status, enterprises are reclassified into: <ul style="list-style-type: none">• Advanced authorized enterprises (高级认证企业)• Authorized enterprises (认证企业)• Enterprises acting in bad faith (失信企业)

Items (cont'd)	Stipulations of the Measures (cont'd)	Stipulations of the Discussion Draft (cont'd)
Collection and publicity of credit information	<ul style="list-style-type: none"> The maximum period for the customs to publicize the information on the administrative penalties for enterprises is <u>five</u> years. 	<ul style="list-style-type: none"> The maximum period for the customs to publicize information on administrative penalties of enterprises is changed to <u>three</u> years. Information listed as below is <u>newly added</u> into the category of enterprise credit information collected by the customs: <ul style="list-style-type: none"> Information on qualification rate of product inspection and quarantine, foreign notification, return, recall, claim, etc. Information on verification of the certificate of origin of the importer, fraud, forgery, alteration, trading or theft of the certificate of origin of exports due to false declaration.
Recognition standards and procedures of enterprise credit standing	<ul style="list-style-type: none"> The custom recognition cycle for advanced authorized enterprises is once every <u>three</u> years. 	<ul style="list-style-type: none"> The custom recognition cycle for advanced authorized enterprises is changed to once every <u>five</u> years. <u>Newly added</u> standards for recognizing enterprises acting in bad faith: <ul style="list-style-type: none"> An enterprise that violates the regulations on frontier health and quarantine, quarantine of entry and exit of animals and plants, safety of imported and exported food and cosmetics, and imported and exported commodities inspection and is investigated for criminal responsibility; An enterprise acting in bad faith re-registers or conducts record filing after deregistration; Employees take advantage of their positions to participate in smuggling activities of duty-free "shopping agent" in Hainan. <u>Newly added</u> situations that the customs shall/may terminate advanced recognition during the application period: <p>An enterprise is suspected of violating the provisions on frontier health and quarantine, quarantine of entry and exit of animals and plants, safety of imported and exported food and cosmetics, and imported and exported commodities inspection and filed as a criminal case/a case under investigation.</p>

Items (cont'd)	Stipulations of the Measures (cont'd)	Stipulations of the Discussion Draft (cont'd)
Administrative measures	Average inspection rate for imported and exported goods of <u>general authorized enterprises</u> should be less than <u>50%</u> of that of <u>general credit enterprises</u> .	<p>Average inspection rate for imported and exported goods of <u>advanced authorized enterprises</u> should be less than <u>20%</u> of that of <u>authorized enterprises</u>.</p> <p>The following provisions are <u>newly added</u>:</p> <ul style="list-style-type: none"> • The average inspection and quarantine rate for imported and exported goods of advanced authorized enterprises should be less than 20% of that of authorized enterprises (unless otherwise specially required under laws, administrative regulations or rules or by the Customs). • The average inspection rate for the origin of exported goods of advanced authorized enterprises should be less than 20% of that of authorized enterprises.
Other provisions		<p>The following provision is <u>newly added</u>:</p> <p>An enterprise that takes the initiative to correct its dishonesty and eliminate the adverse effects may apply to the customs for credit restoration. If the conditions for credit restoration are met, the customs shall approve the credit restoration. The scope, methods and procedures of credit restoration shall be separately formulated by the GAC.</p>

Relevant enterprises are encouraged to express opinion on or before 18 July 2021 by logging onto the official websites of the GAC (www.customs.gov.cn) or by sending mails to aeo@customs.gov.cn.

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

<http://www.customs.gov.cn/customs/302249/302266/302267/1471687/index.html>

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

<http://www.customs.gov.cn/customs/302452/302329/zjz/3723241/index.html>

- ▶ PN regarding replicating and rolling out the pilot supervision of exports of business-to-business (B2B) cross-border e-commerce nationwide (GAC PN [2021] No. 47)

Synopsis

In 2020, the GAC released GAC PN [2020] No. 75 ("PN 75", i.e., PN regarding a pilot of customs supervision of exports of B2B cross-border e-commerce) and GAC PN [2020] No. 92 ("PN 92", i.e., PN regarding expanding the scope of the pilot supervision of exports of B2B cross-border e-commerce) to implement a pilot of customs supervision on B2B cross-border e-commerce exports (hereinafter referred to as the "pilot") via cross-border e-commerce platforms in Customs of certain regions.

To further promote the development of cross-border e-commerce, on 22 June 2021, the GAC released GAC PN [2021] No. 47 ("PN 47"), announcing certain issues related to replicating and rolling out the pilot supervision of exports of B2B cross-border e-commerce nationwide.

According to PN 47, the scope of pilot shall be expanded to the Customs nationwide. The domestic enterprises engaging in the export business for B2B cross-border e-commerce, including cross-border e-commerce enterprises, cross-border e-commerce platform enterprises, logistics enterprises, etc., shall complete the record-filing with local Customs in accordance with relevant regulations. Contents of PN 75 and PN 92 contradicted with PN 47 were replaced by that of PN 47 accordingly. Other issues related to the pilot shall be conducted in accordance with PN 75 and PN 92.

PN 47 shall become effective from 1 July 2021.

You can click this link to access the full content of PN 75:

<http://www.customs.gov.cn/customs/302249/2480148/3136658/index.html>

You can click this link to access the full content of PN 92:

<http://www.customs.gov.cn/customs/302249/2480148/3241719/index.html>

You can click this link to access the full content of PN 47:

http://shenyang.customs.gov.cn/shenyang_customs/zfxgk4391/fdzdgknr57/lzyj24/3423120/3736677/index.html

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

- ▶ Notice regarding the issuance of fiscal stamps for 2021 (STA PN [2021] No. 3)
<http://www.chinatax.gov.cn/chinatax/n367/c5165983/content.html>
- ▶ List of the first batch of import entities eligible for the tax-free import of aviation maintenance equipment
http://www.caac.gov.cn/XXGK/XXGK/TZTG/202107/t20210701_208188.html
- ▶ Notice regarding reducing payment service fees for small and micro-sized enterprises and self-employed industrial and commercial households (Yinfa [2021] No. 169)
http://www.gov.cn/zhengce/zhengceku/2021-06/26/content_5620936.htm
- ▶ Notice regarding cancelling approval for the qualification of engineering-cost consulting enterprises and enhancing interim- and post-event supervision (Jianbanbiao [2021] No. 26)
http://www.mohurd.gov.cn/wjfb/202106/t20210629_250618.html
- ▶ Notice regarding ensuring smooth transition for the reform of “Permits from Business Licenses” in the construction industry (Jianbanshi [2021] No. 30)
http://www.mohurd.gov.cn/wjfb/202106/t20210630_250625.html
- ▶ Notice regarding ensuring the reform of the approval system for qualifications of real estate development enterprises (Jiansijuhanfang [2021] No. 65)
http://www.mohurd.gov.cn/wjfb/202106/t20210630_250633.html
- ▶ PN regarding adjusting the format of the certificate of origin under the “Free Trade Agreement Between China and Switzerland” (GAC PN [2021] No. 49)
<http://www.customs.gov.cn/customs/302249/2480148/3742859/index.html>

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