

Issue No. 2021038

15 Oct 2021

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

- ▶ **Notice regarding public opinions consultation on the "Administrative Measures for the Information Disclosure of Significant Tax Violations and Taxpayers Acting in Bad Faith (Revised Discussion Draft)"**

Synopsis

To implement the Opinions on Further Deepening the Reform of Tax Collection and Administration (hereinafter referred to as the "Opinions") which were jointly issued by the General Office of the Central Committee of the Communist Party of China and General Office of the State Council, on 30 September 2021, the State Taxation Administration (STA) released a discussion draft (hereinafter referred to as the "Discussion Draft") to revise the prevailing "Administrative Measures for the Information Disclosure of Significant Tax Violations and Taxpayers Acting in Bad Faith" released via STA PN [2018] No. 54 (hereinafter referred to as the "Prevailing Measures"). The consultation of public opinion shall be opened until 30 October 2021.

The Discussion Draft includes 27 articles in five chapters, i.e., the general principles, determination of taxpayers acting in bad faith, information disclosure and disciplinary measures, remedy measures and appendix. Key proposed changes include the following:

- ▶ Revised the following standards for significant tax violations:
 - ▶ Have tax withheld or collected but did not pay or paid less than the withheld/collected amount, and the outstanding tax payments exceeded RMB1 million. (newly added)
 - ▶ Obstruct the collection of tax underpayment conducted by tax authorities through transfer or conceal of assets in which the outstanding tax payments exceeded RMB1 million (the threshold is RMB100 thousand as prescribed in the Prevailing Measures.)
 - ▶ False issuance of tax invoices (other than special Value-added Tax invoices or other invoices falsely issued for export tax refund fraud or tax deductions) of 100 or above copies or the amount involved exceeded RMB4 million (the threshold is RMB400 thousand as prescribed in the Prevailing Measures.)
 - ▶ Stealing, intercepting, falsifying or selling data of tax invoices. (newly added)
 - ▶ Administrative sanctions are imposed by tax authorities for illegal provision of bank accounts, invoices, certificates or other convenience to taxpayers or withholding agents which result in underpayment or outstanding payment of tax exceeding RMB1 million or export tax refund fraud. (the underlined part is newly added)
 - ▶ Administrative sanctions are imposed by tax authorities as authorized tax agents violate tax laws/administrative rules which result in underpayments or outstanding payment of tax that exceed RMB1 million. (newly added)
- ▶ Determination of a party acting in bad faith

A party shall be determined as a party acting in bad faith if the party committed one of the prescribed significant tax violations and fall under one of the following circumstances:

- ▶ The tax authority releases a notification of tax administration sanction, but the party fails to apply for administrative reconsideration within the prescribed time frame;
 - ▶ The party applies for tax administrative reconsideration but fails to file for administrative litigation within the prescribed time frame; or
 - ▶ The people's court makes valid ruling on one of the significant tax violations.
- ▶ According to Article 22, the remedy measures shall not apply to the following situations, unless a prescribed exception situation is met:
- ▶ The party received tax adjustments or administrative sanctions by the tax authorities for tax evasion, dodging tax payments demanding by the tax authorities, export tax refund fraud, anti-taxation, issuance of false tax invoices, etc. again, after being regarded as acting in bad faith.
 - ▶ The party was regarded as acting in bad faith twice or more in five years.

In addition, the Discussion Draft also proposed that, in case the parties being regarded as acting in bad faith settled their unpaid taxes, surcharges and penalties before their information is disclosed to the public, the tax authorities shall not make public disclosure of such information.

The changes proposed in the Discussion Draft show the aim not only to tighten the standards for significant tax violations, but also to provide remedy measures and chances for parties acting in bad faith to avoid their information to be publicized, etc.

Taxpayers are advised to read the Discussion Draft in detail and are encouraged to express opinions on or before 30 October 2021 by sending mails, emailing to shuiwuzqyj@163.com or logging onto <http://www.moj.gov.cn>, <http://www.chinalaw.gov.cn>, <http://www.chinatax.gov.cn>.

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

<http://www.chinatax.gov.cn/chinatax/n810356/n810961/c5169481/content.html>

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

<http://www.chinatax.gov.cn/n810341/n810755/c3914071/content.html>

► **Questions and Answers regarding issues related to tax-avoidance during the COVID-19 epidemic**

Synopsis

On 30 September 2021, the STA released the Questions and Answers regarding issues related to tax-avoidance during the COVID-19 epidemic (hereinafter referred to as the “Q&As”) on its official website to provide guidance on transfer pricing (TP) implications during the pandemic, e.g., tax authorities’ principles on TP audit, considerations for enterprises due to losses during the pandemic, key features that should be aware of when preparing the local file of TP documentations, TP impacts for receiving governmental assistance and support, as well as impacts for the implementation of signed advance pricing arrangements.

For example, according to the Q&As, it is emphasized that the tax authorities should apply the arm’s-length principle with consideration of the uniqueness of the economic impacts to the industries of taxpayers.

EY’s TP team has issued a WeChat news article on 9 October 2021 (in Chinese only) regarding the Q&As, you can click the following link or follow us on WeChat by scanning the QR Code on the last page of this CTIE and search keywords to access the full content of the WeChat news article.

You can click this link to access the full content of the Q&As:

<http://www.chinatax.gov.cn/chinatax/n810219/n810744/c101510/c101520/c5169462/content.html>

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

https://mp.weixin.qq.com/s?__biz=MjM5OTYyODg4MQ==&mid=2653786384&idx=1&sn=dc40f4d257e4d4b87cf7929a196eaee2&chksm=bce1a82e8b9621382acf0f8e2b782c010106c1b17304fb2419246f72335bf758a1fa63a0208&mpshare=1&scene=1&srcid=1013HLL25gBQBbCl6iARHtS2&sharer.sharetime=1634092702567&sharer.shareid=148a85738ae7ee336d4058abee0c4b10&exportkey=A0Jc37SEKsdGTIP3TficoY%3D&pass_ticket=T1a%2F9bh%2BNgL%2FqEizvLC8sXrQTG2MDtJ1o%2FjYSaDJebnK0K43Jc%2F5YacHRR6%2Fh8vy&wx_header=0#rd

Business circular

► **Public notice (PN) regarding public opinions consultation on the “Negative List for Market Access (2021 Version Discussion Draft)”**

Synopsis

On 8 October 2021, the National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOFCOM) jointly released the “Negative List for Market Access (2021 Version Discussion Draft)” (hereinafter referred to as the “Discussion Draft” or “2021 Negative List”) to the public to seek public opinions.

Key features of the Discussion Draft are as follows:

Items of the 2021 Negative List

Same as before, the 2021 Negative List is comprised of prohibited items and permitted items.

- ▶ For prohibited items, market entities shall not get access. Government authorities shall not review or approve the applications or go through relevant procedures.
- ▶ For permitted items, market entities can apply for and government authorities shall approve or deny the applications according to relevant laws and regulations, or market entities can enter in accordance with the access conditions and methods stipulated by the government.

Where the industries, sectors and businesses are not included in the 2021 Negative List, all market entities shall enjoy the same market access conditions.

Scope of application

The 2021 Negative List covers all the industries, sectors and businesses prohibited or permitted to invest and operate within the territory of the People's Republic of China according to law.

Number of items

The 2021 Negative List includes 6 prohibited access items and 111 permitted items, totaling 117 items, which has 6 fewer items than that in the 2020 Negative List.

Relevant parties are encouraged to express opinions on or before 14 October 2021 by logging onto the official websites of the NDRC (www.ndrc.gov.cn).

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

https://hd.ndrc.gov.cn/yjzx/yjzx_add.jsp?Siteld=371

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

- ▶ **PN regarding the "Catalog of Non-transport Specialized Operation Vehicles Equipped with Fixtures That Are Exempt from Vehicle Purchase Tax" (3rd batch) (STA/MIIT PN [2021] No. 29)**
<http://www.chinatax.gov.cn/chinatax/n371/c5169396/content.html>
- ▶ **Notice regarding further enhancing the self-regulation and administrative supervision of professional tax services (Shuizongnafuhan [2021] No. 254)**
<http://www.chinatax.gov.cn/chinatax/n810341/n810825/c101434/c5169478/content.html>
- ▶ **Notice regarding accelerating the review of Value-added Tax rebates for natural gas imports (Caibanyujian [2021] No. 40)**
http://gss.mof.gov.cn/gzdt/zhengcefabu/202109/t20210930_3756772.htm
- ▶ **Notice regarding the "Catalog of Energy Saving & New Energy Vehicles Eligible for Preferential Vehicle and Vessel Tax Policies (31st Batch)", "Catalog of New Energy Vehicles Eligible for Vehicle Purchase Tax Exemption (47th Batch)", etc. (MIIT PN [2021] No. 26)**
http://www.caam.org.cn/chn/1/cate_2/con_5234736.html
- ▶ **Notice regarding further preventing and disposing of the risk of speculation in virtual currency transactions (Yinfa [2021] No. 237)**
<http://www.pbc.gov.cn/tiaofasi/144941/3581332/4348658/index.html>

- ▶ **Notice regarding the rectification of virtual currency “mining” activities (Fagaiyunxing [2021] No. 1283)**
https://www.ndrc.gov.cn/xxgk/zcfb/tz//202109/t20210924_1297474.html
- ▶ **Notice regarding matters related to the registration of asst-backed schemes and private equity funds of insurance asset management companies (Yinbaojianbanfa [2021] No. 103)**
<http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=1010315>
- ▶ **2020 Statistical Bulletin of China's Outbound Direct Investment**
<http://www.mofcom.gov.cn/article/news/202109/20210903203247.shtml>
- ▶ **Notice regarding the “Administrative Measures on the Funds for National Key Research and Development Programs” (Caijiao [2021] No. 178)**
http://www.most.gov.cn/tzdg/202109/t20210930_177117.html
- ▶ **Administrative Measures for Credit Reporting Business (PBOC Order [2021] No. 4)**
<http://www.pbc.gov.cn/tiaofasi/144941/144957/4354378/index.html>
- ▶ **Notice regarding regulating the behaviors of performance brokerage institutions and promoting the healthy development of performance industry (Wenlvshichangfa [2021] No. 101)**
http://www.gov.cn/zhengce/zhengceku/2021-09/30/content_5640566.htm
- ▶ **Implementation opinions on supporting the entrepreneurship and employment of Hong Kong and Macao youth in the Guangdong-Hong Kong-Macao Greater Bay Area (Renshebufa [2021] No. 75)**
http://www.gov.cn/zhengce/zhengceku/2021-10/01/content_5640665.htm
- ▶ **PN regarding terminating the issuance of GSP certificates of origin for goods exported to the Eurasian Economic Union (GAC PN [2021] No. 73)**
<http://www.customs.gov.cn/customs/302249/2480148/3900112/index.html>
- ▶ **Notice regarding “Basic Catalogue of General Administration of Customs (2021)” (Shubanhan [2021] No. 46)**
<http://www.customs.gov.cn/customs/302249/zfxxgk/zfxxgkml34/3902114/index.html>
- ▶ **PN regarding implementing the mutual recognition of “Authorized Economic Operator” between the Customs of China and Chile (GAC PN [2021] No. 74)**
<http://www.customs.gov.cn/customs/302249/2480148/3903862/index.html>
- ▶ **Notice regarding public opinions consultation on the “Administrative Measures of the Customs on the Inspection of Import and Export Commodities (Discussion Draft)”**
<http://www.customs.gov.cn/customs/302452/302329/zjz/3938404/index.html>



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

EY exists to build a better working world, helping to create long-term value for clients, people and society and build trust in the capital markets.

Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients, nor does it own or control any member firm or act as the headquarters of any member firm.

Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. EY member firms do not practice law where prohibited by local laws. For more information about our organization, please visit ey.com.

© 2021 Ernst & Young, China.
All Rights Reserved.

APAC no. 03013286
ED None.

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, legal or other professional advice. Please refer to your advisors for specific advice.

ey.com/china

Follow us on WeChat

Scan the QR code and stay up-to-date with the latest EY news.

