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*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 matters related to substantive operations of qualified industrial enterprises in the Guangdong-Macau In-depth Cooperation Zone in Hengqin (Hengqin Tax Service, State Taxation Administration/Hengqin Finance Bureau/Hengqin Commercial Service Bureau/Hengqin Economic Development Bureau/Hengqin Financial Development Bureau joint PN [2023] No. 1)**

Synopsis

According to the prevailing rules, qualifying enterprises registered in the Guangdong-Macau In-depth Cooperation Zone in Hengqin (hereinafter referred to as "Hengqin") and engaged in substantial business in encouraged industries shall be subject to Corporate Income Tax (CIT) at a reduced rate of 15%. To be qualified for this CIT preference, an enterprise is required to meet certain criteria, including having "substantial manufacturing/business operations" in Hengqin.

On 1 February 2023, the Tax Service, State Taxation Administration (STA), Finance Bureau, Commercial Service Bureau, Economic Development Bureau and Financial Development Bureau of Hengqin jointly released PN [2023] No. 1 ("PN 1") to elaborate the four key factors for assessing "substantial manufacturing/business operations" and other relevant requirements:

Key factor I - carrying out manufacturing/business operations in Hengqin

According to PN 1, manufacturing/business operations refer to either of the following situations:

- ▶ From business operation perspective - a qualifying enterprise should have its fixed and main manufacturing/business operation premises with necessary manufacturing/business operation equipment and facilities in Hengqin; or
- ▶ From management execution perspective - a qualifying enterprise should have its effective management in Hengqin that manages and controls the full-scale manufacturing/business operations and exercises an authority to conclude contracts in the name of the enterprise.

On top of this, the official interpretation issued by the above-mentioned five governmental authorities (hereinafter referred to as the "official interpretation") further specifies the term of "effective management that manages and controls the full-scale manufacturing/business operations" as follows:

- ▶ Making manufacturing/operational decisions (such as formulating plans, controls, review, and evaluations)
- ▶ Making financial decisions (such as borrowing/granting loans, financing, and management of financial risks)

However, in case the group has set up a centralized financial center for the whole group, the enterprise in Hengqin would need to maintain at least one of the following financial functions to demonstrate that it has made financial decisions in Hengqin:

- ▶ Borrowing loans
 - ▶ Granting loans
 - ▶ Financing
 - ▶ Financial risks management
- ▶ Making human resources related decisions (such as staff hiring/dismissal, compensation plans)

Key factor II - with sufficient staff in Hengqin

According to PN 1, a qualifying enterprise should have sufficient staff working in Hengqin and their salaries and wages are paid via bank accounts set up in Hengqin.

Specifically, considering its actual business scale, the enterprise should have three to 30 staff and they should pay social insurance (such as endowment insurance) in Hengqin for at least six months in a calendar year¹.

Key factor III - with accounting records maintained in Hengqin

According to PN 1, a qualifying enterprise should maintain the accounting ledgers, accounting books and financial statements, etc. in Hengqin. The basic deposit account and settlement accounts for major business activities should be opened with commercial banks in Hengqin.

Key factor IV - with assets situated in Hengqin

According to the official interpretation, a qualifying enterprise should have necessary assets in Hengqin for manufacturing/business operation purpose.

Exception

Notwithstanding the four key factors stated above, it is stated in the official interpretation that any enterprise falling into either one of the following situations shall be considered disqualified:

- ▶ An enterprise without manufacturing/operational functions only undertakes financial settlements, tax filings, invoicing functions for businesses outside Hengqin; or
- ▶ An enterprise's registered address was found inconsistent with its actual business operation address and contact person of the enterprise cannot be reached or failed to provide its actual business address after accessed by the government authorities.

Application for the CIT preferential treatment

A taxpayer should perform self-assessment to determine whether the above CIT preference is applicable and apply for the preferential tax treatment in the annual CIT filing by filling out the CIT return and a separate Commitment Form for Substantial Business Evaluation (i.e., Attachment 1 of PN 1).

PN 1 became effective from 1 January 2023. It is worth-noting that most criteria of "substantial manufacturing/business operations" for Hengqin are similar to those for Hainan. Relevant enterprises are advised to read PN 1 for greater details when trying to leverage this tax incentive in Hengqin. If in doubt, consultations with professionals are always recommended.

Our Global Compliance and Reporting team has published a WeChat news article on 22 February 2023 (in Chinese only) to discuss PN 1 in greater detail. You can follow us on WeChat by scanning the QR Code on the last page of this CTIE or click the weblink below.

¹ Different from Hengqin, the criteria of qualified "staff" in Hainan Free Trade Port (FTP) is that the enterprise should have three to 30 staff residing in Hainan FTP for 183 days or more cumulatively in a year.

You can click this link to access the full contents of PN 1:

https://guangdong.chinatax.gov.cn/gdsw/zhhqsw_tzgg/2023-02/17/content_680cf0a9e5414af8a233261227b5a5c8.shtml

You can click this link to access the full contents of the official interpretation on PN 1:

https://guangdong.chinatax.gov.cn/gdsw/zhhqsw_tzgg/2023-02/17/680cf0a9e5414af8a233261227b5a5c8/files/c46691d2645a45f08204324fb42e679a.doc

You can click this link to access the full contents of the WeChat article:

<https://mp.weixin.qq.com/s/JbdmHSAF65k3BiVVXUBMOg>

- ▶ **PN regarding extending the 10th set of exclusions to the goods originating from the United States that are imposed with additional tariffs (Customs Tariff Commission PN [2023] No. 1)**

Synopsis

According to Customs Tariff Commission PN [2022] No. 7 ("PN 7", i.e., PN regarding extending the eighth set of exclusions to the goods originating from the United States that are imposed with additional tariffs), goods in the list of PN 7, i.e., the eighth set of exclusions to the goods originating from the United States shall not be imposed with additional tariffs until 15 February 2023. In this respect, on 13 February 2023, the Customs Tariff Commission released Customs Tariff Commission PN [2023] No. 1 ("PN 1") to extend this exclusion.

Accordingly, 124 types of goods listed in the attachment of PN 1 shall continue to be excluded from additional tariffs imposition against the US Section 301 measures from 16 February 2023 to 15 September 2023.

You can click this link to access the full contents of PN 1:

http://gss.mof.gov.cn/qzdt/zhengcefabu/202302/t20230215_3866623.htm

You can click this link to access the full contents of PN 7:

http://gss.mof.gov.cn/qzdt/zhengcefabu/202206/t20220628_3822626.htm

► **Report on Foreign Investment in China 2022 (Chinese and English Editions)**

Synopsis

As China constantly expanded foreign capital utilization, foreign capital has become one of the most important drivers of China's economic development. On 4 January 2023, the Ministry of Commerce (MOFCOM) released the "Report on Foreign Investment in China 2022 (Chinese and English Editions)" (hereinafter referred to as the "Report"). According to the Report, in 2021, foreign capital actually utilized has reached a record high of USD180.96 billion, with a growth rate of 21.2%. Approximately 48,000 foreign investment enterprises were newly established, representing a year-to-year increase of 23.5%, which also indicates a "double growth" in the scale of investment absorbed and the number of enterprises newly established. Further, the Report also covers key policies related to foreign investment introduced in 2021 by industries and regions.

Foreign investment access policies

- Reduce the negative lists for foreign investment access nationwide and in pilot free trade zones (PFTZs).
- Further expand the opening-up of manufacturing industry.
- Explore to relax the access of service industry in PFTZs.
- Optimize the negative-list administration of foreign investment access.
- Grant exclusive access administrative measures to Hainan FTP.
- Newly established comprehensive pilot projects for expanding the opening-up of service industry in Tianjin, Shanghai, Hainan and Chongqing.
- Revise the relevant provisions that are inconsistent with the Foreign Investment Law and improve the foreign investment security review system and mechanism.

Foreign investment facilitation policies

- Constantly deepen the reform of "delegate power, streamline administration and optimize government services".
- Simplify the procedures for tax-related business.
- Optimize the market entry and exit mechanism for enterprises.
- Innovate the reform measures for trade and investment facilitation in PFTZs.
- Promote the liberalization and facilitation of trade and investment in Hainan FTP.
- Adjust laws and regulations to promote the innovation and development of trade in services.

Foreign investment promotion policies

- Improve the foreign investment promotion system.
- Expand the catalogue of encouraged industries for foreign investment and promote foreign investment in key industries.
- Optimize the fiscal and tax policies for foreign investment.
- Improve the foreign investment service guarantee mechanism.

Foreign investment protection policies

- ▶ Implement the national treatment of foreign investment enterprises.
- ▶ Strengthen the protection on intellectual property rights of foreign investment enterprises.
- ▶ Improve the work mechanism for handling of complaints from foreign investment enterprises.

Foreign investment enterprises are advised to make reference to the Report for greater details and consider the development plan accordingly. If in doubt, consultations with professionals are always recommended.

You can click this link to access the full contents of the Report:

<http://wzs.mofcom.gov.cn/article/ztxx/202301/20230103377273.shtml>

▶ **PN issued by the Commerce Department of Hainan Province regarding public opinions consultation on the “Ten Measures of Hainan FTP on Opening up the Professional Service Market to Hong Kong”**

Synopsis

According to the Overall Plan for the Construction of the Hainan FTP (hereinafter referred to as the “Overall Plan”), the Commerce Department of Hainan Province announced the Discussion Draft on the “Ten Measures of Hainan FTP on Opening up the Professional Service Market to Hong Kong” (hereinafter referred to as the “Discussion Draft”) via its official website on 13 February 2023 to seek public opinion. The consultation of public opinion shall be opened until 14 March 2023.

Notable measures proposed in the Discussion Draft include:

- ▶ Hainan FTP shall expand the scope of recognized Hong Kong professional qualifications, which includes 50 qualifications covering the sectors of health, construction, tourism, finance, education, etc. Personnel obtained the listed Hong Kong professional qualifications are allowed to provide the relevant services to enterprises and residents in Hainan FTP.
- ▶ Hong Kong arbitration institutions are allowed to establish business offices in Hainan FTP to engage in foreign-related arbitration business. On the other hand, Hainan representative offices of Hong Kong law firms are allowed to engage in certain commercial non-litigation legal services and law firms in Hainan FTP may hire Hong Kong lawyers as legal advisors.
- ▶ Commercial banks in Hong Kong are encouraged to set up branches or representative offices in Hainan FTP, while insurance companies in Hong Kong are encouraged to set up wholly owned insurance companies or branches in Hainan FTP.
- ▶ Qualifying financial institutions in Hong Kong are encouraged to set up security companies, futures companies and fund management companies in Hainan FTP.
- ▶ Accountants in Hong Kong are allowed to provide accounting consultation and accounting services, etc. in Hainan FTP.
- ▶ Cities and counties such as Haikou and Sanya shall provide preferences for Hong Kong professional service companies and talents in aspects of office areas, settling down of talents, enrollment of their children in schools as well as financial support.

Concerned parties are encouraged to read the Discussion Draft and express opinions on or before 14 March 2023 by sending mails to the Commerce Department of Hainan Province or emails to hnswt7@hainan.gov.cn.

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

<https://mp.weixin.qq.com/s/liqsMY2adi6gFF6LuZSnWA>

You can click this link to access the full contents of the Overall Plan:

http://www.gov.cn/zhengce/2020-06/01/content_5516608.htm

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

- ▶ **PN regarding the “Catalog of Non-transport Special Operations Vehicles Equipped with Fixtures That Are Exempt from Vehicle Purchase Tax” (8th Batch) (STA/MIIT PN [2023] No. 4)**
<http://www.chinatax.gov.cn/chinatax/n371/c5184051/content.html>
- ▶ **PN regarding granting zero-tariff treatment to 98% of taxable goods originated from the Federal Democratic Republic of Ethiopia and other two countries (Customs Tariff Commission PN [2023] No. 2)**
http://gss.mof.gov.cn/qzdt/zhengcefabu/202302/t20230217_3867070.htm
- ▶ **Notice regarding public opinions consultation on the “Notice Issued by the State Administration of Foreign Exchange Regarding Improving Banks’ Digital Services for Foreign Exchange Business of Capital Account (Discussion Draft)”**
<http://www.safe.gov.cn/safe/2023/0215/22331.html>
- ▶ **Measures on Risk Classification of Financial Assets of Commercial Banks (CBIRC/PBOC Order [2023] No. 1)**
<http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=1095372>
- ▶ **Implementation Standards of Administrative Approval Items in the Field of Ecological Environment (MEE PN [2023] No. 7)**
https://www.mee.gov.cn/xxgk2018/xxgk/xxgk01/202302/t20230210_1015992.html
- ▶ **Notice regarding extending the deferred payment of security deposits for tourism service quality (Wenlvfadian [2023] No. 42)**
https://zwgk.mct.gov.cn/zfxxgkml/scgl/202302/t20230209_939006.html
- ▶ **Notice regarding further improving export controls of dual-use goods (Shangbananguanhan [2023] No. 35)**
<http://www.mofcom.gov.cn/article/zwgk/gkzcfb/202302/20230203384654.shtml>
- ▶ **Opinions on comprehensively promoting rural revitalization in 2023**
http://www.gov.cn/zhengce/2023-02/13/content_5741370.htm
- ▶ **Notice regarding promoting standardized recycling and utilization of waste equipment in key projects with effective investment (Fagaibanhuanzi [2022] No. 1064)**
https://www.ndrc.gov.cn/xxgk/zcfb/tz/202302/t20230214_1348690.html
- ▶ **Opinions on further enhancing accounting supervision**
http://www.gov.cn/zhengce/2023-02/15/content_5741628.htm
- ▶ **Notice regarding further enhancing financial support and services for the transportation and logistics sector (Yinfa [2023] No. 32)**
http://www.gov.cn/zhengce/zhengceku/2023-02/16/content_5741858.htm
- ▶ **National Standards of the “Basic Classification and Code of Fixed Assets and Other Assets”**
http://zcgl.mof.gov.cn/zhengcejiedu/202302/t20230215_3866519.htm
- ▶ **PN regarding abolishing five public notices (GAC PN [2023] No. 12)**
<http://www.customs.gov.cn/customs/302249/2480148/4847605/index.html>
- ▶ **Notice regarding promoting the pilot run of cruise routes at Hainan Cruise Port (Jiaoshuihan [2023] No. 36)**
https://xxgk.mot.gov.cn/2020/jigou/syj/202302/t20230216_3758434.html

Contact us

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

Greater China Tax Leader

Vickie Tan

+86 21 2228 2648

Vickie.Tan@cn.ey.com

Our tax leaders by service segment

Andrew Choy

International Tax and Transaction Services

+86 10 5815 3230

Andrew.Choy@cn.ey.com

Becky Lai

Tax Policy

+852 2629 3188

Becky.Lai@hk.ey.com

Alan Lan

Global Compliance and Reporting

+86 10 5815 3389

Alan.Lan@cn.ey.com

Jesse Lv

ITTS - Transaction Tax

+86 21 2228 2798

Jesse.Lv@cn.ey.com

Travis Qiu

ITTS - Transfer Pricing

+86 21 2228 2941

Travis.Qiu@cn.ey.com

Chuan Shi

Tax Technology and Transformation

+86 21 2228 4306

Chuan.Shi@cn.ey.com

Carrie Tang

Business Tax Services

+86 21 2228 2116

Carrie.Tang@cn.ey.com

Bryan Tang

Indirect Tax - Global Trade

+86 21 2228 2294

Bryan.Tang@cn.ey.com

Paul Wen

People Advisory Services

+852 2629 3876

Paul.Wen@hk.ey.com

Kevin Zhou

Indirect Tax - VAT

+86 21 2228 2178

Kevin.Zhou@cn.ey.com

Our tax leaders by service areas

Andrew Choy (China North)

+86 10 5815 3230

Andrew.Choy@cn.ey.com

Ho Sing Mak (China South)

+86 755 2502 8289

Ho-Sing.Mak@cn.ey.com

Wilson Cheng (Hong Kong

SAR/Macau SAR)

+852 2846 9066

Wilson.Cheng@hk.ey.com

Heidi Liu (Taiwan)

+886 2 2757 8888

Heidi.Liu@tw.ey.com

Author - China Tax Center

Jane Hui

+852 2629 3836

Jane.Hui@hk.ey.com

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