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## Tech firm qualification amended

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### In brief

- » On 29 January 2016, the amended “Administrative Measures for Assessment of High and New Technology Enterprise (HNTEs)” (Circular 32) was released, which took effect from 1 January 2016.
- » Circular 32 adjusts the HNTE recognition requirements and procedures and also strengthens related supervision and management.

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2016/05

March 2016

## In detail

On 29 January 2016, Ministry of Science and Technology (MST), Ministry of Finance (MOF), and State Administration of Taxation (SAT) jointly released the amended “Administrative Measures for Assessment of HNTes” (Circular 32), to provide the updated instructions towards HNTe assessment. Certain HNTe recognition requirements and procedures are amended.

The main changes brought to the old “Administrative Measures for Assessment of HNTes” (Circular 172) are compared below against Circular 32:

Item	Old Measures (Circular 172)	New Measures (Circular 32)
Intellectual property (IP) requirement	The applicant must have owned the IP right for the core technology of its key products (services) through independent R&D, assignment, acceptance of gift, merger and acquisition, etc. for the past 3 years or <b>through exclusive licensing for more than 5 years.</b>	The applicant must have owned the IP right for the core technology of its key products (services) through independent R&D, assignment, acceptance of gift, merger and acquisition, etc.
Terminology of IP	The <b>products (services)</b> fall under the scope stipulated.	The <b>core technology</b> of its key products (services) falls under the scope stipulated.
Personnel threshold	The applicant should have hired technical personnel with a college degree or above of a number more than <b>30%</b> of the total employees of the company in one year; and R&D personnel of a number more than 10% of total employees in one year.	The applicant should have hired technical personnel in R&D and related technology innovation activities of a number more than 10% of total employees of the company for the year.
R&D expense threshold	The applicant is required to meet a minimum R&D expense threshold on sales level: <ul style="list-style-type: none"> <li>• <b>6% (for sales &lt; RMB 5 million);</b></li> <li>• 4% (for sales from RMB 5 million ~ 200 million);</li> <li>• 3% (for sales &gt; RMB 200 million).</li> </ul>	The applicant is required to meet a minimum R&D expense threshold on sales level: <ul style="list-style-type: none"> <li>• <b>5% (for sales &lt; RMB 5 million);</b></li> <li>• 4% (for sales from RMB 5 million ~ 200 million);</li> <li>• 3% (for sales &gt; RMB 200 million).</li> </ul>
Assessment requirement	The applicant should satisfy the requirements of the Guidelines for Administration of Recognition of HNTes in terms R&D management, technology commercialization, quantity of independent IP and growth in sales and total assets, etc.	The applicant’s innovation ability assessment shall meet the new requirements (details are not yet issued until now).
Safety, quality and environment protection requirement	No such requirement	The applicant should not have any significant incidents in safety and quality issues or activities seriously against environment protection laws within one year before the application.

Further, the “Catalogue of High and New Technology Areas Encouraged by the State” attached to the regulations is also amended. Some types of technology are removed and also new ones are added, such as the technology for additive manufacturing, supportive technology for cultural and creative sectors, and technology for e-commerce and modern logistics, etc.

**2016/05**

March 2016

In addition, Circular 32 has simplified the assessment procedure and cancelled the re-assessment procedure. An administrative mechanism on selective and key assessment is established, and a follow-up supervision is also strengthened.

### **WTS observation**

A drastic change is observed in the new HNTE legislation that an IP right ownership is now installed as the fundamental requirement for HNTE, with “IP usage right” removed as an alternative option allowed before the amendment. This can be understood and interpreted as an approach to align with BEPS project’s recommendation on form / substance consistency, and to curb the mismatch that an HNTE, even as an IP developer, is still paying royalty or service charges, for using the same IP, to an overseas affiliate registered as an IP right owner. In other words, whether an HNTE is allowed to pay charges in future to its overseas affiliates for IP right owned by itself could be subject to challenge in practice.

The new requirements, though issued on 29 January 2016, are made effective from 1 January 2016. In theory, these new requirements affect also existing HNTEs, especially those which cannot meet the new requirements in terms of IP right ownership or operation thresholds. Thus, expectedly, there should be a transition consideration for them – otherwise a large amount of existing HNTEs will encounter a substantial raise in income tax rate from 15% to 25% if failing to qualify. It goes without saying that existing HNTEs need to revisit the current IP right strategy to cope with the new changes without delay.

*Notes: See also our last infoletter “High-tech = high risk?” (09/10/2015)*

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