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2021 China Tax Yearbook

WTS China

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About WTS China

WTS China is led by a formal Big 4 senior tax partner, and comprises experienced tax professions practising at a quality level comparable to Big 4 standard. It has been in China for 15 years, serving finance / tax services predominantly to MNCs. Its clients include multinational groups, national and international medium and small-sized companies, in various industries.

About WTS Global

With representation in over 100 countries, WTS Global has already grown to a leadership position as a global tax practice offering the full range of tax services and aspires to become the preeminent non-audit tax practice worldwide. WTS Global deliberately refrains from conducting annual audits in order to avoid any conflicts of interest and to be the long-term trusted advisor for its international clients. Clients of WTS Global include multinational companies, international mid-size companies as well as private clients and family offices.

The member firms of WTS Global are carefully selected through stringent quality reviews. They are strong local players in their home market who are united by the ambition of building a truly global practice that develops the tax leaders of the future and anticipates the new digital tax world.

WTS Global effectively combines senior tax expertise from different cultures and backgrounds and offers world-class skills in advisory, in-house, regulatory and digital, coupled with the ability to think like experienced business people in a constantly changing world.

For more information please see: www.wts.cn

Preface

30 December 2021

Dear readers,

As a Chinese saying goes, “*Spring marks the plan of the year*”. With 2021 yearend around the corner, we would like to wish you a fruitful start to a new year.

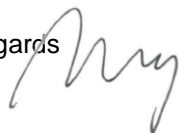
2021 is a year of fast transformation for China. For a recap over 2021, we now offer a complimentary yearbook, a compilation of the tax topics ever reported by WTS China in 2021. They are worthy of another read for their long-term significance, to name but a few:

- China is embarking on a large-scale regionalization for its northern, central, and southern provinces, and transformation of bonded zones into comprehensive bonded zones (CBZs) by harmonizing their infrastructural, administrative, fiscal, and logistic facilitation systems. With the Regional Comprehensive Economic Partnership (RCEP) officially coming into effect from January 2022, regional synergy and customs efficiency will play a more significant role than ever in intra-regional supply chain planning and international trading.
- Starting from 1 December 2021, three mega-regions in China, Shanghai, Guangdong, and Inner Mongolia, are experiencing a full-process digitalization of VAT e-invoicing. This practice will sooner or later be spread nationwide. By then, China’s VAT regime will be escalated to a new era of completely paperless.
- The 2020 version of “*Encouraged Sector List for Foreign Investments*” and the first-ever service sector’s “*Negative List*” are the go-to lists for foreign investors. The former helps foreign investors navigate their investments in the right direction; the latter, though serving only Hainan Free Trade Port (FTP), sets a tone for a forthcoming national version. With a steadfast opening up of its economy, China’s some other exiting negative lists, one for foreign investment and one for free trade zones, are expected to get shorter and shorter.
- Last but not least, starting from 1 January 2022, China will remove the decades-long personal income tax exemptions being offered to foreigners’ fringe benefits (housing, child education, and language training costs). This will result in a surge of tax burdens for the expatriates and call for a revisit to their remuneration structure.

Enjoy your reading. If you need any support, please do not hesitate to contact us.

Happy New Year!

Best regards



Martin Ng

Managing partner, WTS China



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No.01
Jan 2021

China unveils new list on encouraged foreign investments

In brief

- » China has issued the 2020 version of its “Encouraged Sector List for Foreign Investments” on 27 December 2020.
- » The new list will take effect from 27 January 2021.



In detail

Recently, China's National Development and Reform Commission (NDRC, an economy planning authority) and Ministry of Commerce jointly issued the 2020 version of the "Encouraged Sector List for Foreign Investments". The new list will take effect from 27 January 2021.

Unlike its previous updates which usually take two to five years, this latest revision is issued only one year after its 2019 version. It shows China's nimble reaction to the fast change of the domestic and overseas economic climate.

As practiced since 1997, foreign investments in the listed areas are recognized as encouraged investments and can enjoy some tax benefits, e.g. an exemption of customs duty and import VAT for equipment they import for self-use purposes.

The list reflects the state's strategic orientation to certain foreign investments. It contains a national list, applicable in all places, and a collection of provincial lists drawn up by twenty two (22) provinces and regions.

» National list

It has added sixty five (65) and updated fifty one (51) items to the 415-strong 2019 version. These changes focus on the areas of advance technology, special materials, high-end products and equipment, smart cars, advance medical products, environment protection technology, consumer products and civilian services. Some highlights are shown below:

Sector	Details
Advance technology	Research and development of 5G technology, blockchain technology
	Research and development of DNA encoded compound library
	Research and production of cell therapy medicine
	Production of high purity hydrofluoric acid, hydrogen fluoride
	Carbon capture, usage and storage technology
Special materials	Research and production of fibers with special functions or high performances
	Production of diffuser film, photomask base plate for semiconductors
	Research and production of performance nylon materials
High-end products and equipment	Production of high voltage vacuum components
	Production of special valves, special bearings, special glasses
	Production of automatic testing equipment
	Production of high-accuracy tools, high-end production equipment
Smart cars	Production of radar systems for self-driving cars
	Production of components for vehicles (EPB, ACC, wheel speed sensors, etc.)
	Production of charging poles
Advance medical products	Research and production of AI-augmented medical equipment
	Production of life support system for critical illnesses, ECMO
	Production of high-end radiotherapy equipment
Environment protection technology	Design, construction and operation of drainage treatment plants
	Construction ,operation and consultancy on hazardous waste treatment facilities
	Production of noise and vibration cancelling equipment
	Construction and operation of clean energy electricity grids
Consumer products and civilian services	Production of wearable devices, consumer robots, smart home systems
	Development and application of online education, medical and working services
	Language trainings, elderly care services, psychology consulting institutions

There are also other additions and updates in such areas as agriculture, food products, transportation and distribution, etc.

» Provincial lists

They contain sixty two (62) new items and thirty seven (37) updated items in twenty two (22) provinces and regions, especially:

- › **Vocational schools** are added to the list of eight (8) provinces and regions, in Shanxi, Liaoning, Anhui, Hubei, Hunan, Hainan, Chongqing and Gansu;
- › **Graphene and carbon fiber** related equipment and products are added in seven (7) provinces and regions, in Shanxi, Heilongjiang, Henan, Hubei, Guangxi, Sichuan and Gansu;
- › Production of **medical devices and epidemic protective goods** is promoted in six (6) provinces and regions, being Henan, Hubei, Guangxi, Hainan, Tibet and Shaanxi;
- › **Leisure projects, tourism development** are added to six (6) provinces and regions, Inner Mongolia, Heilongjiang, Hainan, Yunnan, Ningxia and Xinjiang;
- › **Hainan**, as announced in 2020, being developed as a free trade port, has added total **eighteen** (18) new items to its list.

The national and provincial list (in Chinese) is available at the official website of NDRC:

<https://www.ndrc.gov.cn/xxgk/zcfb/fzggwl/202012/P020201228567029819518.pdf>

WTS China's observation

To cope with the latest economic climate, China's central and local governments have updated jointly the encouraged sector list for foreign investments. The latest revision has demonstrated China's strategic directions: first, further opening up its economy by enlisting more sectors as encouraged ones for foreign investments; second, giving priority to advance manufacturing; third, upgrading its servicing sectors; forth, guiding more foreign investments to central and western areas.

Investors and business operators are advised to refer to the new list for planning or structuring any further investments in China, taking into consideration the fiscal and tax incentives potentially available to qualified investments, and the application requirements.

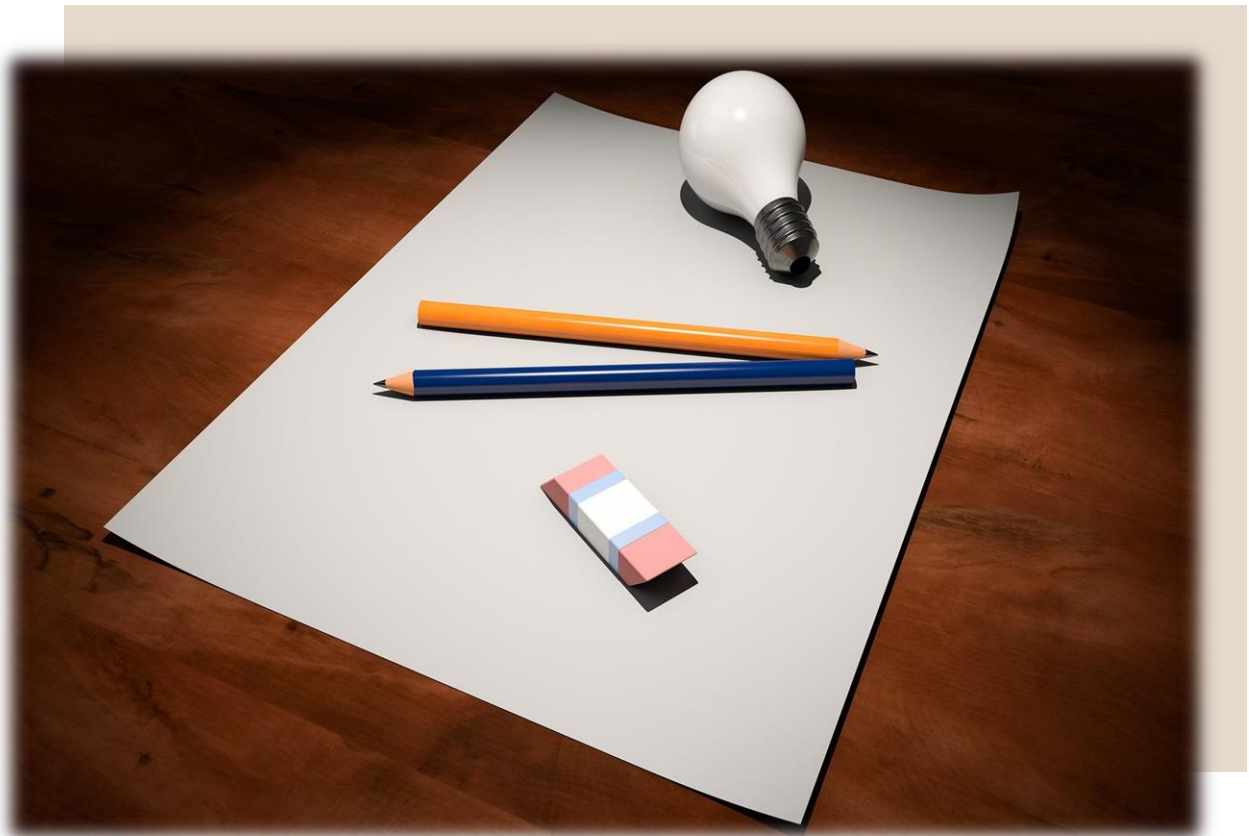
No.02

Feb 2021

Red tapes removed for company name registration

In brief

- » Company name registration can be done now via an online system.
- » A company name can be reserved for two month before a formal registration.



In detail

On 28 December 2020, China issued the “Administrative Provisions on the Registration of Company Names” which will come into effective on 1 March 2021. Comparing to the previous version (dated 2012), the latest version has made some major changes to the application method, the forms of a company name and the clauses on the breach of the regulations.

» Application method

Local governments at provincial or near provincial level are tasked to establish a company name registration system and share it with the public.

The applicants can submit their application to the system by themselves or by personal visits to the local authority’s office. This allows the applicants verify, filter and finalize a name selection by themselves.

A name can be preserved before a formal registration. The new mechanism has granted a name reservation period of two months, and one year for those which need any special reporting and approval.

» Form of a company name

A company name should consist of a location name, a trade name, a sector name, and the type of the entity.

Wordings like “China”, “central government”, “national” and “state” would be strictly scrutinized and approved per the relevant regulations. Foreign-invested enterprises wholly funded or controlled by a majority stake are allowed to use “(China)” in their name.

Branches should use the same name as their parent company’s, with a suffix of “branch company”, “branch factory” or “branch outlet”. A Chinese branch of an overseas company should also state their country of origin and organization form.

» Mechanism for controversy handling

Companies finding any potential infringement to their company names can raise a lawsuit or request the name registration authorities to take necessary actions.

If requested by a court verdict or by a name registration authority’s decision to stop using a name, the company should stop the infringement by using its registration ID code as a temporary name, and change its name within 30 days. Otherwise, it will be classified as an abnormal company in the official record.

WTS China’s observation

The new mechanism will make a name registration task much simpler and convenient. One of the benefits is allowing the company to make the name registration by themselves. The 2020 version has removed the red tapes of verification and approval. It grants more flexibility to the companies on deciding their own name.

In practice, some cities have already pioneered in the new mechanism. Like in Shanghai, the name registration procedures used to take a week or two. Now reportedly its new online system has cut the time dramatically to 24 hours.

No.03
Mar 2021

New boosts on transformation of bonded zones

In brief

- » China is upgrading its bonded zones to comprehensive bonded zones (CBZs) to meet complex business needs.
- » Shanghai is close to transform all of its bonded zones to CBZs.
- » More CBZs are being built or upgraded across the country.



In detail

China is enhancing its boost on transforming bonded zones across the country to comprehensive bonded zones (CBZs), and harmonizing the incentive and facilitation systems for CBZ enterprises and operations.

New CBZs are also built in various places, like Yiwu, east China's Zhejiang Province, and Jiading in Shanghai recently.

In particular, Shanghai has had its ten special customs zones one by one upgraded and re-named as CBZs (including Waigaoqiao CBZ, Yangshan special CBZ, and eight other CBZs).

CBZ enterprises can enjoy a series of preferential policies in tax, customs and administration areas.

1. Preferential tax treatments

- CBZs enterprises can obtain, upon an application, a “general VAT payer” qualification – which allows them to issue VAT invoices themselves, to enjoy input / output VAT crediting, and to enjoy export tax refund.
- CBZs enterprises can cut their operation cost, for example, via an obtaining export tax refund for the utilities (water, power and gas) purchased from sources outside the CBZ, or enjoying preferential treatment in advance before moving into a CBZ.
- CBZs enterprises, manufacturing or processing in a CBZ, are given an option to select how to pay import tariff for their sales to parties outside a CBZ, either based on the raw materials' cost or the products' price.
- CBZs enterprises can enjoy the same unique taxation treatments as those for cross-border e-commerce retail imports, for any of their e-retailing imports.

2. Government support

a) Mobile phones and cars making

- Mobile phones and auto parts manufactured in CBZs are excluded from the import permit requirement.
- Automobiles from abroad can be stored and displayed inside a CBZ on a bonded (tariff free) basis.

b) R&D

- Medical devices bought into a CBZ from abroad can be used for R&D or display, exempted from any registration or record formalities.
- Goods imported for R&D purposes in a CBZ are exempted from an import permit.
- New R&D enterprises in CBZs can start their operation with the highest customs rating after passing an evaluation.

c) Manufacturing

- CBZs enterprises are allowed to process goods from other places outside the zone in the China mainland.
- New manufacturers in CBZs can get the highest customs rating after an evaluation.

d) Storage location

- Large equipment (aircrafts, vessels, etc.) traded under a financial leasing contract, if not suitable to be placed in a CBZ, are allowed to be placed elsewhere under customs supervision.

3. Facilitation measures

CBZ enterprises can enjoy faster, easier and more flexible administrative treatments, such as simplified customs procedures, streamlined inspection for food, priority entry for animal and plant products, consolidated declarations, and convenient administration of non-bonded goods, etc.

WTS China's observation

CBZs enterprises can enjoy preferential policies according to their own business models. CBZs, as a structural reform breeding foreign trading and investment growth, will mean fewer restrictions, quicker access and easier formality to foreign firms.

No.04

Apr 2021

Transformation path set for tax administration

In brief

- » China's central government has issued a national directive, setting the direction and the path for transforming the country's tax control and administration systems, and urging a serious implementation nationwide.



In detail

On 24 March 2021, China's two top executive bodies, the General Office of the Communist Party of China (CPC) Central Committee and the General Office of the State Council, have jointly issued the "*Opinion on Further Intensifying the Transformation of China's Tax Control and Administration*" (hereinafter as the "Opinion"). The document has set clear the next-generation objectives for China's tax administration and controlling systems.

The Opinion has set the national targets on tax administration upgrading. Local tax authorities are tasked with the missions to retool their tax administration to achieve a fast-paced digitalization, governance improvement, efficiency enhancement and supervision.

In particular, it has emphasized a few key objectives, which may also shed light on the near-term priorities.

1. VAT e-invoicing

The Opinion has urged for a complete turnaround from paper VAT invoices to e-invoicing nationwide. As a matter of fact, before the Opinion was issued, it has been announced already that all newly registered taxpayers should be able to practice e-invoicing by January 2021. Therefore, it is aspired that the new tool will soon be available to all taxpayers - not only the newly registered, but also the existing taxpayers.

2. New "credibility + risk" supervision model

The Opinion proposes a new tax supervision system with the following features:

- Incentivizing taxpayers of a good credibility and punishing those of a poor credibility;
- Maintaining a dynamic system to evaluate tax credibility and risks, and adopting a differentiated approach to taxpayers of a different level of credibility;
- Enhancing the penalty against tax avoidance without interrupting the operation of taxpayers.

The Opinion also highlights the need to monitor the tax risk of individuals of a high net wealth. The focus of the work is to consolidate data, streamline services, check errors, detect malpractices and punish incompliance.

3. Cross-discipline and cross-country collaboration

The Opinion advocates further more collaboration in all dimensions to achieve a better synergy in the combat against tax avoidance, including:

- Collaboration among government bodies;
- Collaboration with commercial organizations;
- Collaboration with judicial bodies; and
- Collaboration with international bodies.

WTS China's observation

The Opinion has set clear the strategic targets and the path for upgrading China's tax administration. The good news is that VAT e-invoicing is around the corner for all to use, which can effectively cut administration workload and curb tax frauds. The bad news is that tax audits could abound and be more aggressive than ever with the help of the new technology and innovation in the tax administration system

No.05

Apr 2021

China makes VAT incentive claims easier

In brief

- » China has further simplified the procedures for claiming VAT incentives.
- » The new procedure has taken effect from 1 April 2021.



In detail

China's State Administration of Taxation (SAT) has announced the new procedures for claiming VAT incentives. The details of the announcement are as below:

- » For claiming VAT reduction and exemption, a direct claim in the routine VAT filing form is sufficient (i.e. a separate application is no longer required). Supporting materials should be kept and be ready for inspection when necessary.
- » For claiming VAT refund for the first time, application materials and supporting materials must be submitted to the tax authority.

For any subsequent claims, if the transaction situations remain unchanged, the supporting materials are no longer required, except the application forms. If situations have changed, an explanation should be submitted to the tax authority in the next filing.

- » Taxpayers who no longer meet the criteria for VAT incentives should stop enjoying them from the month when they fail to meet the criteria.

The said new procedures have taken effect from 1 April 2021.

WTS China's observation

Taxpayers are no longer required to prove their case before enjoying a VAT incentive. The new practice will undoubtedly reduce the workload. However, it should be noted that there is no change to the existing criteria.

In other words, taxpayers are now tasked with the obligation to review their own qualification, and are held responsible for any malpractices or errors.

In addition, the documentation record for each application has become more important than ever. Therefore, an adjustment to the tax function of a company should be made, to ensure the review and documentation tasks are well performed.

Tax reliefs planned by the government's work report

In brief

Further tax reliefs will be released per the Chinese government's work report:

- » More preferential tax policies will be launched to promote technology development and environment protection;
- » More tax relief will be offered to small companies;
- » The tax authority will continue its reforms in “delegation, management and services”;
- » A series of measures will be launched to promote foreign trade and foreign investment.



In detail

The Chinese government has delivered the 2021 government work report in March 2021. On 26 March, 2021, the State Council has released further instructions to various departments on how and when to implement the plans. Specifically, it has mentioned therein the following tax reliefs should be delivered:

» Supports to technology development

- To encourage R&D activities, the super deduction rate will be increased from 75% to 100%. For a manufacturing company incurring R&D expenses in a year, it can claim two times the expense for deduction for the corporate income tax (CIT) purpose.
- To promote the advance manufacturing, the rate of refunding the incremental VAT credit will be raised from the current 60% to 100%. That means a full refund.

» Aids to small companies

- The VAT exemption threshold, being the monthly revenue, for small-scale taxpayers will be raised from RMB 100,000 to RMB 150,000.
- A CIT relief is offered to small-and-low-profit enterprises. To them, for any annual taxable income less than RMB 1 million, an effective CIT rate at 2.5% will apply, instead of the current 5%.

» Supports to green economy

To promote and encourage the investment in environment protection, energy conservation and water saving, the following CIT incentives will be offered:

- CIT exemption or reduction is offered to the income from environment protection, energy conservation and water saving.
- 10% investment in the purchase of special facilities for environment protection, energy conservation and water saving can be credit against the CIT liability.

Further, the scope of environment protection, energy conservation and water saving for the CIT incentives will be expended.

» Further reform to tax administration

The Chinese tax authority will continue further its reforms in “delegation, management and services”, including:

- Setting up an information exchange platform with other authorities;
- Promoting an online services for tax matters;
- Streamlining the deregistration procedures for small-and medium-scale companies;
- Simplifying the procedures for claiming tax benefits.

» Boosts to foreign trade and investment

- Shortening the negative list for foreign investment;
- Reducing the tariff to boost the import business;
- Improving the procedures at the customs to accelerate the customs clearance.

WTS China's observation

Aiming at an annual GDP growth over 6% in 2021, the aid plan released by the government's work report would target at combating the aftermath of the pandemic, boosting more reforms and innovation, and increasing foreign investment. A series of preferential tax policies and measures to be offered represents a scaling up of fiscal means to provide further stimulus to the recovering economy.

No.07
Apr 2021

China simplifies personnel forex banking process

In brief

- » China's forex regulator (known as SAFE) has simplified the banking procedures, by relaxing the review and documentation requirements governing the forex affairs of Chinese and foreign nationals in China, with effect from 2 April 2021.



In detail

China's forex regulator, State Administration of Forex (SAFE), has announced the measures to simplify the banking procedures for current-account forex purchase, settlement or remittance by foreigners or Chinese nationals.

According to the notice (*ref. Hui-fa [2021] No. 13*) made public on its website on 2 April 2021, SAFE instructs all banks in China to streamline their review procedures governing forex-related requests raised by Chinese and expatriate personnel in China. The relaxation addresses specifically the following areas:

- » **Standard form:** Banks are notified to adopt a SAFE-mandated one-page application form in all their manual or online process. The new form must be put into practice ASAP, and not later than the end of June 2021. It requires the applicants to indicate, simply by checking the box, which of the following is their purpose for making forex settlement, conversion or remittance:

<input type="checkbox"/> Private trips	<input type="checkbox"/> Overseas study	<input type="checkbox"/> Business trip	<input type="checkbox"/> Family visits
<input type="checkbox"/> Medical care	<input type="checkbox"/> Shopping	<input type="checkbox"/> Insurance fees	<input type="checkbox"/> Consulting services
<input type="checkbox"/> Salary & wages	<input type="checkbox"/> Licensing fees	<input type="checkbox"/> Investment rewards	<input type="checkbox"/> Transportation
<input type="checkbox"/> Forex saving in China	<input type="checkbox"/> Purchase of forex in China	<input type="checkbox"/> Others	

The form serves in effect as a commitment letter, which requires the applicant to guarantee that the application for forex usage is based on a genuine, valid and legitimate reason. It holds the applicants legally liable for any untrue disclosure, malpractices or non-compliant acts.

- » **Consistency check:** The banks are reminded to check if the purposes mentioned by the applicants are consistent throughout, especially by those who intend to remit the fund right after purchasing the forex.
- » **Review exemption:** The banks are advised to phase out the review on the following cases, which have a recurrent nature, if a review has been done to their first-time application raised by the same person to the same bank:
 - Payment of overseas education fees by Chinese nationals, for converting Chinese yuan into forex and remittance of the fund to an overseas education institution;
 - Receiving overseas salary by Chinese nationals, for converting forex into Chinese yuan;
 - Receiving salary from a China employment by expatriates in China, for converting Chinese yuan into forex, supported by a valid China employment contract.
- » **Green channel policy:** The banks are required to establish up a green channel policy to accommodate any current-account forex handling requests from individuals for any special reasons not explicitly covered by the prescribed scope, as long as their requests can be justified by a genuine and legitimate transaction. Such a policy has to be subject to SAFE's prior approval before its implementation.

The notice has taken effect from 2 April 2021.

WTS China's observation

The new practice is a boost to individuals having a recurrent need to make or receive payments in forex in China. It also signifies a further step in forex opening-up, to cope with the growing trend of global mobility of human resources and cross-border transactions of personnel.

The establishment of a green channel policy by each bank, pre-approved by SAFE, to deal with the special forex need of individuals is an innovative approach. It can be viewed as SAFE's attempt to delegate further autonomy to the banks without sacrificing efficiency, and to test each bank's risk controlling capability. One may aspire, if the implementation runs well, that the same could be extended to corporate forex rules too in future, to resolve some long standing issues under the current forex control systems.

No.08
July 2021

Customs implications in new administrative penalty law

In brief

- » The revised *Law of the People's Republic of China on Administrative Penalty* will come into force on 15 July 2021, replacing its 2017 version.
- » Some revisions may have a bearing on customs penalty measures.



In detail

The *Law of the People's Republic of China on Administrative Penalty* ("the Administrative Penalty Law"), adopted at the 25th Meeting of the Standing Committee of the 13th National People's Congress of the People's Republic of China on 22 January 2021, will come into force on 15 July 2021.

This said law is binding to all authorities empowered by the State Counsel and local governments capable of passing administrative penalties, including China Customs. We have reviewed some of the latest amendments and noted that the following revisions are expected to affect customs administrative penalty:

» Extended statute of limitation

According to the previous provision, the administrative penalty will not be imposed on any offence dated over two years. The revised Administrative Penalty Law has extended the above period to five years for cases having an impact on human life and health, financial security or capable to result in harmful consequences.

The law has not provided further what types of goods could be referred to as "having an impact on the life and health". It is likely that such goods as medical supplies, medical equipment, cosmetics and foods are covered by this new provision, and their statute of limitation might be extended to five years.

» Expanded scope of administrative penalty

The revised Administrative Penalty Law has included new types of administrative penalties, including public denouncement, qualification degrading, operation restriction, business closure or limitation by order.

It is expected that the types of customs administrative penalties could be expanded in accordance with the amended Administrative Penalty Law. For example, a downgrading in customs credit rating system might be integrated into the scope of customs administrative penalties.

» Penalty waivers

Two circumstances listed in the Administrative Penalty Law could be exempted from penalty:

- Initial offences with minor consequences and timely correction: It is expected that the customs administrative penalty will also introduce this provision and may further issue the "list of initial offences exempted from penalty" to clarify the matters.
- Offences not due to subjective fault: This opens the opportunity for importers and exporters to cite this provision for an exemption from penalty with the Customs.

WTS China's observation

With the new revisions to the Administrative Penalty Law, relevant authorities are expected to update their penalty rules accordingly, including the Customs. Chinese importers and exporters are recommended to keep an eye on the most updated customs administrative penalty regulations and act accordingly.

In addition, under today's strict customs environment, compliance and data accuracy remain the key elements of a successful importing or exporting. A routine compliance check or internal audit to identify potential risks and make corrections is effective to avoid customs administrative penalty.

No.09

July 2021

China to rev up streamlining and de-regulation

In brief

- » From 1 July 2021, the new practice of "separation of licenses from permits" will be implemented nationwide to streamline government services in a larger scope and more industries.



In detail

From 1 July 2021, per State concile's announcement, China will institute a nationwide reform of cancelling approval certificates, simplifying the government services procedures, implementing a transparent "list management" system on operation permits, and promoting the use of electronic licenses. This is another important reform since the concept of "decentralization, management and servicing" was introduced in 2015.

» "Decentralization, management and servicing" refers to the decentralization of government and improvemens in regulations and services. In the "separation of licenses from permits" reform, the term "licenses" refers to the business licenses issued by the State Administration for Market Regulation (SAMR); the term "permits" refers to the specific operation permits issued by a sector regulator, some which require an approval, some do not.

- For those permits requiring an approval, the State Council has proposed four reform approaches:

Approach	Sectors	Affected Permits	Results
Cancellation of approval	Foreign trade, engineering construction, transportation and logistics, intermediary services	Nationwide: 68 items In FTZ: 15 items	Business can start after obtaining a business license
By filing	Trade distribution, education and training, medical, food, finance	Nationwide: 15 items In FTZ: 15 items	Business can start after obtaining a business license
By a commitment	Agriculture, manufacturing, production services, consumption, telecommunications, energy	Nationwide: 37 items In FTZ: 40 items	Much clearer and practical criteria to follow
Streamlined approval	1) Production of important industrial products (except foodstuffs and fertilizers); 2) Security services; 3) Establishment of accounting firms; 4) Warehousing of goods under customs supervision; 5) Business premises for internet access services, etc.	Nationwide: 1) 15 items 2) 256 items 3) 140 items 4) 18 items 5) 13 items	Decentralizing the approval authority, streamlining the permit conditions and documents, and reducing the approval time, etc.

*FTZ: Free Trade Zone

- For those permits not subject to an approval, they will be integrated into the business license per the "one integrated license" practice.
- » In addition, the "separaton of licenses from permits" reform is put under the following supervision:

Daily supervision

For general sections, a supervision model of "two random and one public act" will be implemented, which means randomly selecting a target, randomly appointing inspectors and disclosing the result to the public.

Performance supervision

The new measures will include combining the corporate credibility ranking system with the system for individuals. Enterprises and individuals listed in the "blacklist" will face a series of restrictive measures. For example, their credibility will be taken into consideration in the review of any official applications, registrations, administrative licenses, qualifications, record recognition, and subject to corresponding restrictions or prohibitions.

- **Post-event supervision**

Big data, cloud computing and the internet plus regulatory system will be utilised to achieve a highly efficient supervision.

WTS China's observation

It was not long ago that China overhauled its market entry systems via some innovative practices, propagandaed in Chinese slogans as "licensing comes before permitting" (issuing a business license to a company even before it has an operation permit), "three in one" (combining three licenses into one), and "one code for one license" (using one code for one company to capture all registration details).

The recent move has elevated the reform to the greatest extent possible that some approvals will be replaced by a simple filing or even removed. This aims at resolving the longstanding difficulty of obtaining an operation permit after getting a business license, and eliminating the confusion caused by numerous certificates issued to a single company. "One for all" is the ultimate goal of the reform, to streamline the bureaucratic process and to enhance the supervision over compliance.

No.10
Aug 2021

China unveiled its first service negative list

In brief

- » Chinese issued its first service negative list, coming into effect on 26 August 2021.
- » It serves only Hainan Free Trade Port (FTP) but sets a model for a national list.



In detail

» Introduction

On 23 July 2021, China's State Development and Reform Committee (SDRC) and Ministry of Commerce (MoC) have jointly issued China's first-ever negative list for services trade for the Hainan Free Trade Port, the second largest island to the south of China which was built into China's largest Free Trade Port (FTP) in 2019. The new list will come into effect on 26 August 2021.

Though it is a negative list only for cross-border service trade in Hainan FTP, it is the first-ever move by China for cross-border services trade, and sets a milestone initiative prior to a national negative list for service trades in expectation. Cross-border service trade covers cross-border services, consumption abroad and presence of natural persons.

The said service trade negative list covers the 11 categories with 70 special measures. For any service sectors not included in the list, overseas and domestic service providers will enjoy equal market access and level playing field in Hainan FTP. Overseas service providers can provide cross-border services to entities or individuals in Hainan FTP without setting up any entities in Hainan.

As a matter of facts, this is the second negative list issued for Hainan FTP. The latest 2021 version governs cross-border service trades whereas the 2020 version governs foreign investments in Hainan FTP (see the comparison below).

Two negative lists for Hainan FTP			
Cross-border services (2021)		Foreign investment (2020)	
	Items		Items
1. Agriculture, forestry, livestock farming, fishing	1	Agriculture, forestry, livestock farming, fishing	3
2. Construction	1	Manufacturing	2
3. Wholesaling, retailing	2	Power, heating, gas, water generation / supply	1
4. Transportation, warehousing, postal	13	Wholesaling, retailing	1
5. Information transmission, software, IT services	6	Transportation, warehousing, postal	4
6. Financial services	17	Information transmission, software, IT services	2
7. Leasing and commercial services	12	Leasing and commercial services	2
8. Scientific research, technical services	4	Scientific research, technical services	3
9. Education	2	Education	2
10. Hygiene, social work	1	Hygiene, social work	1
11. Culture, sport, entertainment	11	Culture, sport, entertainment	7
Total	70		29

The negative list approach reflects the country's effort in further improvement to the transparency and predictability of the business environment. For example, in Hainan FTP, foreign investors are greenlighted to open securities and futures accounts and can apply for qualifications in securities and futures investment consultancy. Further, foreign companies cannot sell veterinary drugs, feeds, feed additives, agricultural chemicals, except setting up a sales office in China, or selling via an agency in China.

WTS China's observation

Back in 2018, the “*Special Administrative Measures (Negative List) for Shanghai Free Trade Pilot Area, China*”, issued by the Shanghai Municipality Government, covering 31 sectors with 159 measures, could be viewed as a local government's pioneering attempt at cross-border service trade.

This time the negative list was issued by the central government, covering 11 sectors with 70 measures, reflecting a foremost boost to China's cross-broader service trade.

Service trade is gaining its weight in China's economy. Taking 2020 as an example, Hainan's service industry accounts for 60% of its GDP whereas its cross-border service trade accounts for 16.5% of its total cross-border trade; China as a whole has its service industry accounting for 55% of its GDP whereas its cross-border service trade accounting for 12% of its total cross-border trade.

The new negative list offers to investors a solid clarity what services they can provide in Hainan HTP beyond the list. Expectedly, a national negative list for cross-border trade service should be in the pipeline, which will cast a valuable insight in supply chain planning.

No.11
Aug 2021

Shanghai promotes trading headquarters

In brief

- » Shanghai has rolled out another investment policy, attracting companies to set up a “trading headquarters”.
- » Companies in four types of business can seek for a recognition as a trading headquarters, to enjoy the benefits.



In detail

On 23 July 2021, Shanghai rolled out a new policy ("Several Opinions of Shanghai on Encouraging Companies to Set Up Trading Headquarters") attracting further investments on headquarters economy. The policy will take effect from 1 September 2021 till 31 August 2026.

We summarize below the main content of the policy.

» Scope

› Investor

Both foreign and domestic investors can set up trading headquarters in Shanghai.

› Functions

Trading headquarters refers to those trading entities in Shanghai handling any one or a combination of the following functions for their affiliates:

- Sourcing;
- Distribution;
- Marketing;
- Settlement; or
- Logistics; etc.

› Business

Companies in the following four types of businesses can apply for the recognition as a trading headquarters:

- 1) Domestic wholesale and retailing;
- 2) International trading of goods;
- 3) Warehousing / logistics or international servicing;
- 4) Internet platform business.

» Criteria for recognition

Shanghai city's Commerce Committee is the authority responsible for assessing the application for the recognition of a trading headquarters.

Shanghai-registered companies applying for the recognition as a trading headquarters in the following four types of businesses must meet the said criteria:

Business	Criteria
Domestic wholesale and retailing	<ul style="list-style-type: none"> • Revenue of previous year has exceeded CNY 10 billion • Over 50% of its revenue is from domestic wholesale and retailing sales
International trading of goods	<ul style="list-style-type: none"> • Revenue of previous year has exceeded CNY 6 billion • Over 50% of its revenue is from international trading
Warehousing / logistics or international servicing	<ul style="list-style-type: none"> • Revenue of previous year has exceeded CNY 4 billion • Over 50% of its revenue is from international warehousing / logistics, or international servicing
Internet platform business operators	<ul style="list-style-type: none"> • Number of registered users or vendors has exceeded 5,000, with more than 30% vendors from outside Shanghai • Annual transaction volume has exceeded CNY 5 billion (for consumer-facing platforms) or CNY 15 billion (for corporate-facing platforms)

» Application

Applicants should submit (a) **an application form** and (b) an **audited financial report** of the previous year for seeking the recognition. The district and city commerce department will each take **five** working days to process the application.

» Benefits

Recognized trading headquarters can enjoy the following benefits:

1) Incentives and subsidies

Trading headquarters can be granted local incentives and subsidies such as special trading funds and development funds, etc.

2) Financing

- They can be listed in a government-backed “Policy-driven Financing and Guarantee Fund for Medium-and-micro Businesses”;
- They can set up cross-border RMB cash pooling, and adopt net-off treatments in their current-account RMB payables and receivables;
- They can also consolidate their cross-border finance managements for fund movement, clearing, settlement, hedging, investing, and financing.

3) Tax

Trading headquarters can join the trial program for digital VAT invoicing, enjoy a simpler procedure for VAT invoicing operations, and enjoy the beneficial tax treatments in restructuring.

4) Immigration

- Chinese nationals can apply for APEC business travel cards to enjoy VISA and other immigration benefits from APEC countries;
- Foreign nationals can apply for multiple-entry VISA up to 180 days of stay, valid for one year;
- Foreign staff can apply for a residence permit with a long period of validity (three to five years).

5) Customs

Trading headquarters can enjoy a faster customs clearance and simpler administration measures.

WTS China's observation

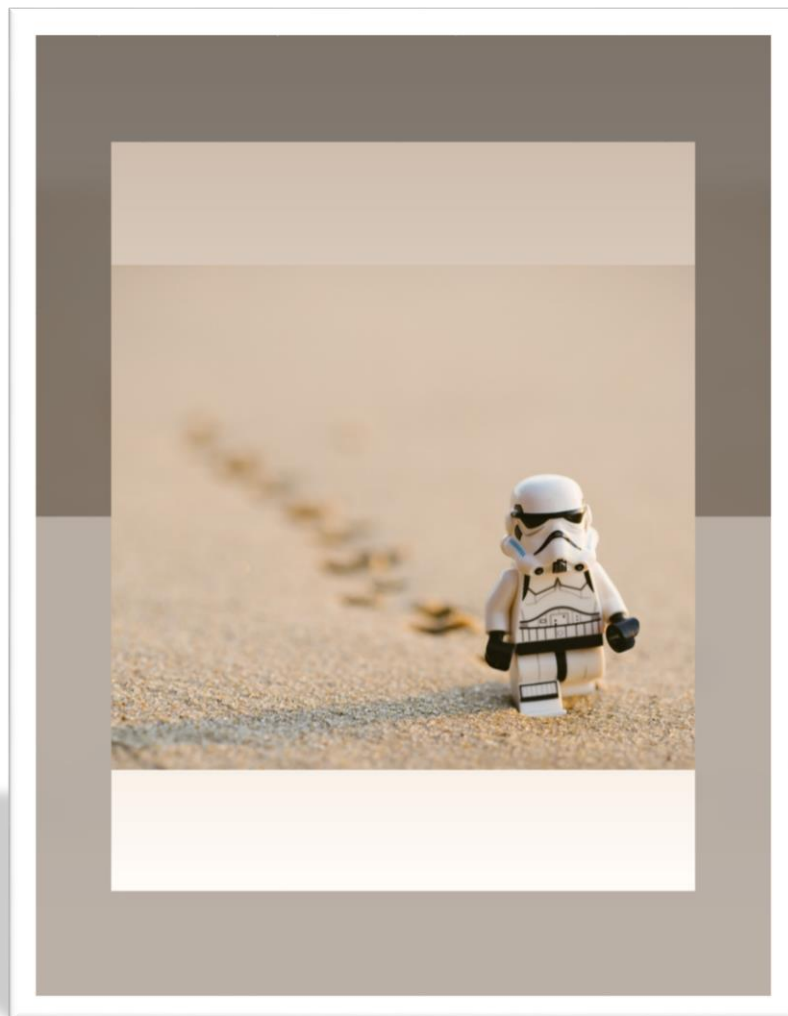
Shanghai's new policy on trading headquarters is another major step to promote headquarters economy. Companies meeting the requirements should consider if their China supply chain strategy can fit into the new policy and benefit from it.

No.12
Aug 2021

China testing new practice: pledge-style tax certification

In brief

- » China has introduced a pledge-style tax certification practice, allowing taxpayers to sign a pledge on some key tax data so as to skip the hassle of evidence submission.
- » The new practice applies to six types of tax tasks, effective nationwide from 1 July 2021.



In detail

China's State Administration of Taxation (SAT) has kicked off a brand-new practice called the "pledge-style tax certification" practice – which allows the taxpayers to sign a pledge on the truthfulness of some key tax information to avoid the red tapes of actually submitting the proving documents.

By this new method, taxpayers can submit a pledge letter to the local Chinese tax authority, following an official template to confirm the key data required for a tax benefit and agreeing to bear legal liability for any untrue information. The letter must be in duplicates and stamped with a company's official seal (if the taxpayer is a company), with one copy kept by the tax authority and the other by the taxpayer. It will form the basis for a taxpayer to claim a tax benefit allowed by the tax laws and regulations.

» Application scope

To start with, the new practice, to be implemented nationwide, will apply only to the following six types of tax tasks, according to SAT's announcement (*ref. SAT Announcement [2021] No. 21*). There are also an official template provided for each of them.

No.	Pledge scope	Usage scope
1	Family member's information	This is for a deed tax reduction when purchasing the family's only property or a property for the second time (or for the first time due to government-initiated relocation). With a pledge, one can skip the submission of birth certificates, marriage certificates and residency permits.
2	Family housing survey	Same purpose as mentioned above. With a pledge, one can skip the survey.
3	School property confirmation	This is for a deed tax exemption on the property used as school premises. With a pledge, one can skip the submission of a school operation license issued by the local government.
4	Overseas tax credit claims	This is for overseas income tax credit claims. With a pledge, one can skip the submission of an audit report for its overseas branch's financial statements.
5	Tax sparing credit claims	This is for tax sparing credit claims due to overseas tax benefits enjoyed. With a pledge, one can skip the submission of a proof on the tax benefit enjoyed or an audit report.
6	Transfer of an offshore entity	This is for capital gain tax deferral in the transfer of an offshore entity. With a pledge, one can skip the submission of overseas documents for the share transfer of the offshore entity.

» Pledge as an option

Taxpayers are given the option to choose whether to submit a pledge letter instead, or to submit all the required certification documents in the traditional way. The two practices differs in the following manner:

Pledge letter?	Submission Document
If yes	Only a pledge letter is needed using the official template (with reported information, a pledge, and a confirmation on legal responsibility for errors).
If no	All certifications and documents must be submitted per the tax regulations.

» Legal responsibility

Taxpayers are held legally liable for the truthfulness of their reported information. The tax authority may conduct due diligence check against each pledge, and take actions if an untrue or a false reporting is established – which include correction orders, penalty imposition or submission of the case to criminal charges.

» Inapplicability

The new practice will not apply in the following situations:

- 1) Cases involving a serious breach to tax laws and integrity; and
- 2) Cases pending corrective actions against previous pledges.

WTS China's observation

To taxpayers in general, it should be more than welcome to see the pledge-style tax certification practice being introduced, though so far it is limited to only six types of tax tasks. A simple but solemn pledge can indeed save a taxpayer a lot of efforts and cost in collecting the necessary proving documents, especially those involving overseas authorities like claiming overseas tax credits or transfer of the equity of an offshore entity.

However, one should not take it as a mundane and risk-free practice. A diligent review on the pledge should be enforced since the pledge itself is irrevocable and the taxpayer is held legally liable for it.

No.13
Aug 2021

Tax policies to boost Shanghai's Pudong

In brief

- » A new guideline to support Pudong's high-level reform and opening-up was released on 15 July 2021.
- » The said guideline clarifies the direction of relevant preferential tax policies to be issued to support Pudong's development.



In detail

China's Central Committee and the State Council released on 15 July 2021 the "*Guideline about Supporting High-level Reform and Opening-up of the Pudong New Area and Building a Pioneer Area for Socialist Modernization*" (the Guideline).

The Guideline sets a clear development target for Pudong New Area in Shanghai, and outlines 27 measures for future policy roll-out in order to meet the area's development target. Along with these incentive measures, the Guideline provides a high-level view on relevant tax policies to be issued to promote business activities in Pudong. Specifically, the following preferential tax policies are offered by the Guideline:

» **Reduced corporate income tax (CIT) rate**

Based on the experience in developing Shanghai Pilot Free Trade Zone Lin-gang Special Area, the Guideline suggests a reduced CIT tax rate for qualified companies in Pudong engaging in production and research in such key fields as integrated circuits, artificial intelligence, biomedicine and civil aviation.

The CIT on those companies will be levied at a reduced rate of 15% (lower than the China-wide standard CIT rate of 25%) for five years from the date of their establishment.

» **Preferential CIT for venture capital companies**

The Guideline proposes to assign a specific area in Pudong to launch preferential CIT policies for venture capital companies.

During the policy period, eligible venture capital companies can be exempted from certain CIT according to the shares held by individual shareholders at the end of an assessment year.

» **Exemption on import taxes**

Import taxes (import VAT and import consumption tax, where applicable) would be exempted for drugs to be used in clinical research.

In addition, the Guideline supports R&D institutions by exempting them from the import taxes for self-use equipment and offers a tax refund for the self-use equipment which are sourced in China.

» **Incentives to bonded business**

Measures for promoting Pudong's bonded business are also raised by the Guideline:

- Extending the policies of Yangshan Special Comprehensive Bonded Area to Pudong's customs supervision areas; and
- Encouraging shortlisted companies outside the customs supervision areas to carry out high value-added, high-tech, and environment-friendly repairing business for offshore market.

WTS China's observation

To implement the measures mentioned in the Guideline, more details are expected to be released, adding vitality into the development of Pudong. Investors are advised to keep a close eye on Pudong's regulatory developments, so as to make full use of the policies in investment management, capital financing, and personnel management, etc.

No.14
Sep 2021

The double dip to China's expatriates' wages

In brief

- » Expatriates working in China will face a double-dip hit to their wages due to the changes to Chinese individual income tax (IIT) and social security (SS) policies.
- » New changes will result in an extra cost to both parties, employers and employees (expatriates).



In detail

» Taxation changes

Expatriates in China will soon face a challenge to their current individual income tax (IIT) position. Their tax privilege in a transitional practice for years is expiring on 31 December 2021. Unless a renewal is granted, they should be prepared to bid farewell to their current tax benefits.

Ending tax break for three allowances

To expatriates, the current tax-free treatment to three types of perks will go away on 31 December 2021. Housing rental, child education and language training costs will no longer be fully deductible.

Caution: They will be replaced by six types of limited and itemized deductions capped at a very low level (see table below). What's more, the new deductions are available to only those technically categorized as China tax residents (it refers to those having stayed in China for 183 days or more in a calendar year). Non-tax residents cannot claim such deductions.

Before (till 31 December 2021)		After (from 1 January 2022)	
Personal expenses	Tax-free amounts	Items	Deductible amounts (CNY)
1. Housing rental	Actual expenditure	1. Housing rental	1,500 / month (e.g. Shanghai)
2. Children education		2. Children education	1,000 / child / month
3. Language training		3. Continuing education	400 / month
4. Home country visit		4. House loan interest	1,000 / month
5. Relocation		5. Elderly support	2,000 / month in a one-child family; otherwise, ≤1,000 / month
6. Meal		6. Medical treatment for major illness	≤80,000/year
7. Laundry			
8. Travel			

Ending tax relief for bonus

The current tax-relieved practice to a bonus will also go away on 31 December 2021 – which for the time being allows a taxpayer to treat a bonus separately from the consolidated income in IIT calculation. The effect is that it will hit a lower monthly IIT rate by spreading it over twelve months.

Caution: From 1 January 2022, such relief will be removed. The bonus must be included in the consolidated income for IIT calculation, resulting in a higher IIT rate, and thus a heavier tax burden.

» Social security policy change

Social security scheme (SS) exemption for expatriates will go away. For some years, it never seemed mandatory for expatriates to join the Chinese SS schemes. The “Interim Measures” (Decree No. 16, issued in 2011 by the Ministry of Human Resources & Social Security) has been requiring SS participation, but Shanghai’s local rule suggests that expatriates “may” contribute to the basic pension, medical and occupational injury insurance. Thus, in practice, many have taken a voluntary approach and chosen not to join.

Caution: Shanghai's local rule expired on 15 August 2021. There is no sign of its extension. It is understood as an effort to harmonize with the national practice, making now the SS scheme mandatory for all expatriates working in Shanghai.

Same as the national structure, Shanghai's SS scheme consists of contributions from employees and employers. The scheme's contribution base and rates are the same as those for Chinese nationals, usually subject to annual adjustments.

Below is an example of Shanghai's base cap and rates (valid from 1 July 2021 to 30 June 2022). An expatriate in Shanghai will have to contribute CNY 3,256.47 / month in total, and an employer to contribute over CNY 8,000 / month, using the base cap as an example. In most cases, an expatriate's salary would exceed the base cap, and thus the base cap should apply.

Shanghai SS scheme					
Items	Base cap	Employee		Employer	
		Rate	Monthly pay (CNY)	Rate	Monthly pay (CNY)
Pension	31,014	8%	2,481	16%	4,962
Medical		2%	620	10.5%	3,257
Unemployment		0.5%	155	0.5%	155
Occupational injury		n/a		0.16% -1.52%	50 - 471
Total		10.5%	3,256	27.16%-28,52%	8,423 - 8,845

Notes:

- 1) Decimal values are rounded up;
- 2) Maternity: No employee's portion; employer's portion has been included into medical insurance.

WTS China's observation

In effect, the said policy changes will mean a drastic cut to an expatriate's take-home pay and a surge in an employer's payroll cost.

In the few months leading to 1 January 2022, preparation should be considered to cope with the changes, including option simulations, optimization, backup plans, employee-employer communication, contract adjustments, and company policies amendments, etc.

Attention should also be paid to local policy updates. Some cities may grant local subsidies to offset the negative effects caused by the changes.

No.15
Sep 2021

China accelerates personal data protection

In brief

- » China's first dedicated law on personal data protection will take effect from 1 November 2021. It governs both onshore and offshore personal data processing parties.
- » Business operations engaging in the processing of personal data generated from or collected in China should be reviewed for compliance purposes.



In detail

» New law on personal data protection

China passed its landmark privacy protection law, the 74-article “*Personal Data Protection Law*” (hereinafter as **PDPL**) on 20 August 2021. The new law will take effect from 1 November 2021 and will have a global impact.

Affected parties

PDPL has collectively named all the personal data processing parties as “*personal data processors*” (hereinafter as **PDPs**). PDPs cover individuals and corporations engaging in the processing of personal data generated from or collected in China.

Further, the law governs not only onshore but also offshore PDPs which sell products to or provide services to personnel in China, engage in analyzing or evaluating personal behavior in China or receive personal data from China.

Personal data

PDPL has defined personal data as “*all kinds of data rated to the identified or identifiable natural persons stored electronically or by any other means, but excluding those anonymous data*”.

Specifically, it has laid out provisions for sensitive personal data which, in case of leakage or misuse, may potentially damage personal dignity, personal safety, and property safety, e.g. biometric identification, religions, special identity, medical health, financial accounts, and location tracks, as well as the personal data of minors under the age 14.

Personal data processing acts

According to the new law, the term “*processing*” is meant to cover the wide range of acts concerning personal data, from collection, storage, usage, editing, transmission, provision, disclosure to deletion.

Further highlights

The details of other provisions of PDPL are summarized and enclosed overleaf under the following headings:

- A. Guiding principles
- B. Safe harbor
- C. Requirements on personal consent
- D. Multiple personal data processors (PDPs)
- E. Rights and obligations in personal data processing
- F. Sensitive personal data
- G. Cross-border provision of personal data
- H. Rights of individuals
- I. Obligations of a personal data processor (PDP)
- J. Penalty clauses

WTS China's observation

This legislation inscribes China's first comprehensive legal attempt to define personal data and regulate the processing of them, in the existence of other legislations concerning data security, like Cybersecurity Law, the Civil Code, the Data Security Law, and the E-Commerce Law.

Business communities should note its global impacts as it governs the processing of personal data not only in China but also outside China. It mandates that domestic regulators' approval is required even though the transfer of personal data overseas is to meet any judicial or legal obligations.

Further, the definition of personal data is so broadly set that it covers also some other information particularly sensitive to the interests of the persons, e.g. location tracking or religion belief. In other words, personal data collection would better be limited to the minimum extent necessary for the operation.

Business operators should review the regulatory and commercial impacts caused by the new law for the obligations, systems, and compliance procedures imposed on them as a PDP. E.g. an internet sales platform operator should review if its customized sales proposal generated from an automated decision-making process is accompanied also by a non-customized option; a retail outlet operator should check if its collection of personal data via an image capturing equipment is legal or not.

Special attention should also be paid to the harsh and onerous requirements set for cross-border transfer of personal data from China. It is possible that some offshore operations could fall into the restriction scope and may need to meet the new requirements: e.g. offshore shared service centers (SSC) and marketing hubs entailing personal data transmission from China, or an offshore intranet infrastructure in the possession of a large amount of personal data generated from China.

Click below to read China news on personal data protection:

- *"Musk confirms Tesla will store Chinese data locally"*, 26 September 2021, Shanghai Daily
- *"Three app firms face scrutiny over data security"*, 6 July 2021, Shanghai Daily
- *"China's Didi refutes rumors about service suspension"*, 18 July 2021, Shanghai Daily

Abstract of China's "Personal Data Protection Law" (DPPL)

A. Guiding principles

Personal data processors (PDP) are required to observe these guidance principles:

1. Ensuring the process is legal, reasonable, and reliable, without involving any misleading, fraudulent, or coercive measures;
2. Obtaining a discrete approval from the persons involved;
3. Ensuring succinct transparency on data usage and processing methods;
4. Safeguarding the quality and security of personal data in the process;
5. Avoiding any acts against state security and public interest;
6. Limiting the quantity of personal data processed to the extent possible; and
7. Limiting the storage period of personal data to the shortest time possible.

B. Safe harbor

PDPL has indicated the following situations *allowable* for personal data processing.

1. It is conducted after obtaining consent from the persons concerned;
2. It is necessary for establishing a commercial or employment contracts;
3. It is necessary for fulfilling mandatory statutory or official duties in China;
4. It is necessary due to public hygiene or emergency incidents;
5. It is necessary for news reporting and public supervision;
6. It concerns only the personal data already made public by the individuals concerned or by other legal means; or
7. Other circumstances prescribed by China's laws and regulations.

To business operators in general, the first three types of personal data processing could be the most common.

C. Requirements on personal consent

1. The data processor shall seek personal consent from the individuals concerned, based on full disclosure, under a voluntary situation, and in a discrete or written format (except situations from [2] to [7] mentioned above);
2. The data processor shall re-seek personal consent if the data usage scope has changed;
3. The data processor should allow the individuals to withdraw their consent any time without setting any conditions or hassles;
4. The data processor cannot refuse to sell products or provide services to the individuals on the ground that they have disapproved or withdrawn their consent for processing their personal data;
5. The data processor is required to disclose to the individuals its identity, contact methods, data usage scope, and data storage period;
6. The data processor is required to notify the individuals when it has processed their personal data without their prior consent due to emergency situations.

D. Multiple person data processors (PDPs)

PDPL has laid out provisions governing four situations in which multiple PDPs will be involved, including:

1. **Co-processing:** If two or more PDPs are involved, they need to agree contractually on each other's rights and obligations. The individuals can exercise their rights and claims against any of them, holding them responsible for joint and several liability for any damages caused.
2. **Outsourcing:** The PDP, if outsourcing its data processing tasks to other agents, is required to agree with them contractually on the purposes, time limit and method, type of personal data, protection measures, as well as the rights and obligations of both parties, and to supervise the acts of the agents. The agents are required to return or delete the personal data, once its outsourcing contract ceases to be effective.
3. **Restructuring:** The PDP, if needed to transmit its personal data to others in time of restructuring like merger, division, dissolution, or bankruptcy, is required to inform the persons concerned of the changes. The data recipients will be held responsible for their obligations as a PDP, and are required to refresh the consent-seeking process if they intend to process the personal data in a manner different from that of the original PDP.
4. **Transmission:** The PDP, if intending to transmit personal data to others, is required to seek personal consent from the individuals concerned; the data recipients are required to re-seek the individuals' consent if they have changed the original processing purposes and scope.

E. Rights and obligations in personal data processing

PDPL has set out the rights and obligations for personal data processors (PDPs):

- The PDPs shall ensure transparency, fairness, and impartiality when using personal data in an automatic decision-making process; for any customized sales proposals provided to individuals, it should also provide non-customized options and a convenient means for their rejection.
- The individuals have the right to seek an explanation on or reject a decision made only through an automatic decision-making process.
- The PDPs shall not make public any personal data, unless with the individual's consent.
- The PDPs, if installing any image capturing and personal identification equipment in public venues for collecting personal data, should use them only for maintaining public security; it should also display a conspicuous sign for the equipment.
- The PDPs may process the personal data already made public by the individual concerned or by other legal means but must still seek personal consent from the individual if it has a major impact on his/her rights and interests.

F. Sensitive personal data

PDPL has set out separate provisions governing the processing of sensitive personal data:

- It should only be conducted for a specific purpose and sufficient necessity, and under strict protection measures;
- It shall be subject to the individual's consent, and even in writing if the regulations require so in certain cases;
- It should be made known to the individuals on the necessity and the impacts;
- It should be subject to the consent of the minor's parents or other guardians if it processes the personal information of a minor under the age of 14. It should be conducted under special measures formulated by the PDP specifically for the personal data of minors under the age of 14.
- It should be subject to relevant permits or other restrictions if such provisions prevail.

G. Cross-border provision of personal data

From China's perspective, a cross-border provision of personal data from China to overseas is considered as a sensitive act.

PDPL has spelled out lengthy and stringent conditional provisions on such an act. PDPs are advised to exercise pragmatic measures to ensure meeting ALL the following requirements before transmitting personal data from China to overseas:

1. It shall be put to a security evaluation by the Cyberspace Administration of China ("CAC");
2. It shall be certified by a specialized body on its effectiveness in data protection;
3. It shall establish a contract with the overseas recipient using CAC's standard contract template, setting out the obligations and interests of both parties;
4. It shall meet the conditions prescribed by China's laws and regulations, and CAC's provisions;
5. It shall comply with any international treaties or agreements concluded with or acceded to by China for the provision of personal data outside China;
6. It shall exercise necessary measures to ensure that the overseas personal data recipient can also meet China's personal data protection standards;
7. It is subject to the individual's consent, and the PDP in China has to inform the individual concerned of the details of the cross-border transmission;
8. It is prohibited to transmit personal data overseas if the data size has reached the limit prescribed by CAC, and all personal data generated and collected in China shall be stored in China; If it is really necessary for the transmission to overseas, it should be subject to CAC's evaluation first;
9. It will be subject to the approval by China's relevant authorities if such a personal data transfer to overseas is for fulfilling any obligations under the international treaties and agreements concluded or acceded to by China; no such transmission is allowed to any foreign judicial or law enforcement authorities unless the said approval is granted.
10. No personal data transmission can be made to any overseas organizations or individuals blacklisted by CAC for their records of infringing on personal data laws or endangering national security and public interests.
11. No personal data transmission can be made to any countries or regions blacklisted by China for their discriminatory, prohibitive, restrictive, or other similar measures against China in personal data protection areas.

Notably, it would require exhaustive review and application efforts to achieve a cross-border transmission of personal data, to the extent that one may call it discouraging.

H. Rights of individuals

It is noteworthy of the rights of individuals that a PDP should be prepared to respect:

1. The right to know and make decisions on the processing of his/her personal data, and the right to restrict or refuse others to process his/her personal information, unless otherwise provided for by the laws;
2. The right to consult or copy his/her personal data from a PDP, and the right to request the transmission of his/her personal data to a PDP designated by him/her;
3. The right to request corrections or supplements, if finding his/her data is incorrect or incomplete;
4. The right to request deletion to his/her personal data when the need for the data process no longer exists, the PDP ceases to operate or has violated data protection laws, the data storage period has expired, or the laws require the deletion.
5. The right to request a PDP to explain its personal data processing rules.
6. The right to consult, copy, correct and delete the personal data of his/her close relatives who have deceased; and
7. The right to file a lawsuit with a court against a PDP who refuses an individual's request for exercising his/her rights.

I. Obligations of a personal data processor (PDP)

1. Set up a personal data management and protection system, for personal data processing, classification, security, authorization, training, and emergency plans;
2. Nominate a *personal data protection officer* for supervising all personal data processing, where the size of the personal data processed has reached that specified by CAC; make public and submit his/her name to the personal data protection authorities;
3. For any PDPs outside China in cross-border data transmission cases, nominate an organization or a representative in China responsible for personal data protection matters; submit its name and contact methods to China's personal data protection authorities;
4. Conduct regular compliance audits on the processing of personal data;
5. Conduct an impact assessment on personal data protection matters; keep a record of the treatments; maintain the report for at least three years;
6. Exercise remedial measures and notify the authorities and the individuals concerned for any personal data being leaked, tampered with or lost;
7. The said notification to individuals can be waived, if the PDP has taken effective remedial measures for the incidents. Yet, if the personal data protection authorities believe that harm is caused, they may require the PDP to notify the individuals concerned.
8. Assume the following additional obligations, if a PDP provides important Internet platform services with a large number of users and complicated business:
 - a) Establish a supervision body composed of external members to supervise personal information protection;
 - b) Formulate rules and standards, based on the principles of openness, fairness, and impartiality, for personal data processing and protection;
 - c) Ban any vendors of products or services from using the platform if they have seriously violated the regulations; and
 - d) Publish social responsibility reports regularly on personal data protection matters for social supervision.
9. Where an agent is entrusted with the task of personal data processing by a PDP, it should take necessary measures to ensure data security and assist the DPP to perform its obligations.

J. Penalty clauses

The consequences of violation to PDPL could be serious business disruption, penalty, and discrediting. The penalty will be imposed in the following sequence:

1. In a minor case, a warning for correction will be issued by a local authority, related income will be confiscated, and the application programs concerned will be temporarily or permanently suspended from usage;
2. If a correction is not made, a fine up to CNY 1 million (roughly USD 155,000*) will be imposed on the entity concerned, and a fine to the personnel in charge in the range of CNY 10,000 (about USD 1,550*) to 100,000 (about USD 15,500*); or
3. In a very serious case, a warning for correction will be issued by a provincial or above authority governing personal data protection, related income be confiscated, a penalty of max. CNY 50 million (about USD 7.75 million*) or 5% of last year's revenue will be imposed, related business will be suspended or halted, related licenses or permits will be suspended or revoked, a penalty will be imposed to the personnel in charge in the range of CNY 100,000 (about USD 15,500*) to 1 million (about USD 155,000*), and their appointment to any position of directors, supervisors, senior managers, or personal data officers in China will be prohibited.

Further, the violation record would be posted to the credit systems accessible by the public.

** The CNY to US exchange rate stands at 1 to 0.155 on 28 September 2021*

No.16
Oct 2021

New changes to indirect tax surcharges

In brief

- » The Urban Maintenance and Construction Tax Law of the People's Republic of China came into effect on 1 September 2021.
- » The newly promulgated law has further clarified provisions on the of calculation basis, the identification of the taxpayer's location, and tax payment and withholding obligations.



In detail

On 11 August 2020, the Standing Committee of the 13th National People's Congress passed the Urban Maintenance and Construction Tax Law of the People's Republic of China (hereinafter as the "UMCT law"), which came into effect on 1 September 2021.

UMCT is not a new tax but has been levied for over 30 years under a set of temporary regulations. UMCT is a surcharge levied on indirect taxes liability (i.e. VAT and consumption tax). In other words, to a taxpayer, the higher its indirect tax liability, the more its UMCT liability will be.

According to the previous temporary regulations, and also now the new law, UMCT is collected and kept by the local governments and must be spent only on urban construction and maintenance projects, such as public housing, roads and bridges, water supply, drainage, heat supply, ferry, gardening, hygiene, fire safety, traffic signage, and lighting, etc.

While maintaining the same principles, rates, and measures of the temporary regulations, the new UMCT law, applicable also to other local levies such as education surcharges, has introduced some changes and clarifications that could have a significant bearing on a taxpayer's indirect tax burden.

1. Clarification on tax base

To avoid increasing the burden of the tax-refundable enterprises, article 2 of the UMCT Law clarifies that the tax base of UMCT shall exclude the VAT refunds.

In addition, it had been unclear whether the VAT exemption and credit should be subject to UMCT which is inconsistently practiced in various places. The "Announcement on Determination of Tax Base for UMCT" (hereinafter as the Announcement No. 28), which came into force at the same time as the UMCT Law, stipulates that the VAT exemption and credit shall be levied on urban construction tax.

Thus, the tax base is VAT+ consumption tax (excluding the two taxes paid due to import of goods or sale of labor services, services, and intangible assets within the territory by overseas entities and individuals), + VAT exempt credits — directly exempted or reduced VAT on consumption tax - refunds of VAT credits.

2. UMCT exempted on imported and services

According to Caishuizi [1985] No. 69, imported products have been exempted from UMCT. However, for imported services and intangible assets, in the prevailing practice, UMCT used to be withheld by Chinese importers when paying abroad.

The law has introduced a significant change in this regard. Article 3 stipulates that imported services are no longer subject to UMCT. This shift has aligned the UMCT practice for imported services with that for imported goods, both exempted from the reversed charges system.

Meanwhile, according to article 2 of Announcement No. 28, the tax base for education surcharge and local education surcharge shall be the same as that for UMCT, indicating that while UMCT is not levied on imported services, no education surcharge and local education surcharge will be levied.

3. Taxpayer's location determined by the local authority

The new law continues to adopt the same tax rates of the previous regulation, depending on the level of locality: 7% for taxpayers in a city, 5% for taxpayers in a county or a town, and 1% for taxpayers not located in a city, a county or a town. On this basis, the new law states that a taxpayer's official location shall be

determined by the local authority based on relevant rules. Therefore, in practice, the final tax rate will be determined according to actual conditions and local requirements.

4. Clarification on withholding timing and withholding agent

The new law adopts the same provision that the UMCT liability timing as that of the previous regulations, being the same timing for VAT and consumption tax.

In addition, a new regulation on withholding agents has been added. The withholding agents of UMCT are the entities and individuals obligated to withhold VAT and consumption tax. They are required to withhold UMCT when withholding VAT and consumption tax.

Tax declaration procedures are also simplified. The State Administration of Taxation is actively promoting a combined declaration of UMCT, VAT, and consumption tax, and aims to achieve soon a synchronized and simultaneous levy in all situations.

WTS China's observation

According to the new UMCT Law, the State Council can formulate preferential policies for UMCT reductions and exemptions for key groups. The previous tax incentives for the new start-up of retired soldiers, small-scale VAT taxpayers, and major national water conservancy projects will continue. It is expected that there will be no major changes to them in the short term.

No.17
Nov 2021

China stops issuing outdated GSP certificates

In brief

- » China's customs authority has announced its decision to stop, from 1 December 2021, issuing Generalized System of Preferences (GSP) certificates of origin for goods shipped to 32 nations which have ended their GSP treatments to China.
- » Assessment on historical and future duty exposure is advised for shipping China-made goods to the said 32 nations.



In detail

In response to 32 nations' withdrawal of Generalized System of Preferences (GSP) treatments to China goods, China's General Administration of Customs (GAC) has announced, by the notice GAC-2021-84 dated 25 October 2021, that it will accordingly stop issuing the GSP certificates of origin for goods bound for those nations, effective from 1 Dec 2021.

The 32 nations include 27 European Union (EU) members, the United Kingdom, Canada, Turkey, Ukraine, and Liechtenstein.

What are GSP treatments?

GSP is the scheme under which tariff preferences are granted unilaterally and non-reciprocally by developed countries to developing or least developed countries and places. One of the typical GSP benefits is a reduced tariff rate, usually 20% to 100% off the most favored nation tariff rates, apart from other procedural conveniences.

To enjoy the GSP tariff benefits, Chinese exporters are required to obtain a GSP certificate of origin (called "Form A") from China's GAC for the GSP scheme-listed goods to claim tariff benefits in the country of importation, the benefit-giving country.

Surprise or déjà vu?

It is not the first time that such a GSP status withdrawal has happened to China. Based on a GSP scheme and its criteria, the benefit-giving countries would at their discretion grant or cancel the GSP status recognition, without the obligation to allow for any negotiation or appeal mechanism.

GSP benefits withdrawal occurs when a GSP beneficiary country meets the specific economic criteria set up in the relevant GSP scheme – which will trigger "product graduation" or "country graduation" resulting in the removal of the products from a GSP beneficiary country, or removal of the country from the list of GSP beneficiary countries.

China has already witnessed a few cancellations in the past decade. Out of the forty countries (see appendix A) which have ever granted GSP benefits to China so far, most of them have one after another withdrawn China's GSP status (see table below).

Countries decided to withdraw China's GSP status	Countries' withdrawal date	China's decision to stop GSP certificates
Canada	1 January 2015	1 December 2021
27 EU countries	1 January 2015	1 December 2021
Japan	1 April 2019	1 April 2019
3 EAEU countries	12 October 2021	12 October 2021
UK, Turkey, Ukraine, Liechtenstein	Recent few years	1 December 2021

As observed from the table shown above, GAC's announcement is a belated administrative response to the decision of the 32 countries to lift GSP benefits to China goods made recently or in previous years.

So far, only three countries continue to grant GSP benefits to China, being Norway, New Zealand, and Australia.

What implications?

Once a GSP status is canceled, its implication should be the loss of the entitlement to the preferential GSP tariff rates (lower than the most favored nation rates and the normal rates). However, it is noted that China's Customs authority keeps issuing GSP certificates of origin for goods bound for countries which have canceled the GSP treatments to China, and some of the goods may still benefit from the GSP rates in some countries. It may give rise to a technical question that if there were incorrect declarations in the countries of importation.

Now with China GAC's formal announcement, the immediate effect will be the loss of the key document for GSP treatments for China goods being exported to the said 32 nations, effective from 1 December 2021.

Yet the new measure should not be interpreted as affecting all China goods shipped to GSP benefit-giving countries. To be exact, it affects only those China-made goods which can meet the GSP requirements, being:

1. Those listed under the relevant GSP scheme of the corresponding benefit-giving countries;
2. Those can qualify for obtaining China's GSP certificate of origin; and
3. Those which are directly shipped from China to the benefit-giving countries without any transshipment (some countries do not contain this criterion in their GSP scheme).

In other words, those China-made goods currently not qualified for a particular GSP scheme should not be disadvantaged; those affected and losing the GSP benefits will still have access to the normal certificate of origin if they can meet China's rules of origin but will be subject to the normal tariff rates (unless other preferential rates can apply). Meanwhile, China-made goods bound for Norway, New Zealand, and Australia will still have access to China's GSP certificates, as these three countries still maintain their GSP treatments to China goods.

WTS China's observation

For any parties involved in shipping China-made goods to the said 32 nations in their sales or purchases, it is necessary to assess the implications and impacts for the loss of GSP benefits. The following steps are advised:

1. Check sales/purchases involving GSP rates

The coverage of a GSP scheme varies from country to country. It is necessary to verify on per-scheme basis if any China-made goods were or will be shipped to the said 32 countries in sales or purchases.

2. Assess contract terms and duty impact

The Incoterms and tax terms of a sales/purchase contract will decide who will bear the import duty (and the additional import duty). The import duty rates differ from one country to another and vary from one product to product. It is also necessary to check if any other preferential options are also available, e.g. most favored nation rates, free trade agreement rates, or RCEP rates. It is equally important to check if any previous import GSP-rates declarations could be considered as technically incorrect and would involve any remedial actions, based on the GSP scheme's rules and domestic laws of the country of importation.

3. Prepare for notification and negotiation

If your company is in one of the 32 nations and buying China-made goods which have been enjoying GSP benefits, a prompt discussion with the Chinese suppliers (or subsidiaries) will be helpful regarding who will bear the extra tariff cost and if the normal certificate of origin can be obtained from China.

If your company is in China, exporting China-made goods to the 32 nations and has been seeking GSP benefits there, a due notification should be made to the overseas customers (or affiliates) in those 32 countries on the loss of a GSP certificate, in addition to the discussion on the liability of the extra tariff cost.

4. Conduct legal / tax review on amended contracts and documents

Due to the changes, corresponding amendments to the sales/purchase contracts and shipping documents should be conducted, and be subject to legal and tax review.

Appendix A

40 nations ever granted GSP benefits to China	37 nations stopped granting GSP benefits to China
Twenty-seven EU countries	Stopped
1. France	
2. Germany	
3. Italy	
4. Netherlands	
5. Luxemburg	
6. Belgium	
7. Denmark	
8. Ireland	
9. Greece	
10. Portugal	
11. Spain	
12. Sweden	
13. Finland	
14. Austria	
15. Poland	
16. Czechoslovakia	
17. Slovakia	
18. Hungary	
19. Malta	
20. Slovenia	
21. Lithuania	
22. Latvian	
23. Estonia	
24. Cyprus	
25. Bulgaria	
26. Romania	
27. Croatia	
28. UK	Stopped
Three EAEU nations	Stopped
29. Russia	
30. Kazakhstan	
31. Belarus	
32. Turkey	Stopped
33. Ukraine	Stopped
34. Canada	Stopped
35. Switzerland	Stopped
36. Lichtenburg	Stopped
37. Japan	Stopped
38. Norway	GSP benefits to China remain
39. New Zealand	GSP benefits to China remain
40. Australia	GSP benefits to China remain

No.18
Dec 2021

China gearing for a full e-VAT process

In brief

- » Three regions in China, Shanghai, Guangdong, and Inner Mongolia, are launching a pilot program to implement a full-process digitalization of VAT e-invoicing starting from 1 December 2021.
- » It signals a possible nationwide practice soon.



In detail

On 30 November 2021, Shanghai, Guangdong Province, and Inner Mongolia Autonomous Region have announced the **"Pilot Program for Full-Process Digitalization of VAT E-Invoices"**, with the green light from the State Administration of Taxation (SAT).

The pilot program will be launched in the said three regions to certain taxpayers starting from 1 December 2021. Further to SAT's announcement in December 2020, the said program has pioneered further improvements. It allows taxpayers to register, initiate, issue and cancel VAT e-invoices themselves all online, and 24 hours a day for all days via an online e-invoice service platform (<https://etax.shanghai.chinatax.gov.cn>, <https://etax.guangdong.chinatax.gov.cn>, or <https://etax.neimenggu.chinatax.gov.cn>)

Under the new program, any VAT e-invoices issued electronically and carrying either the title "Special VAT Invoice" or "Ordinary VAT Invoice" will bear the same legal effects as their paper versions'.

1. Scope of application

Two groups of taxpayers are designated for the pilot program:

- Any new VAT taxpayers registered in the piloted areas after 1 December 2021;
- Any existing VAT taxpayers having access to the said online platform in piloted areas.

The local tax authorities will decide, depending on the pilot-test result, when to spread the practice throughout Shanghai, Guangdong, or Inner Mongolia.

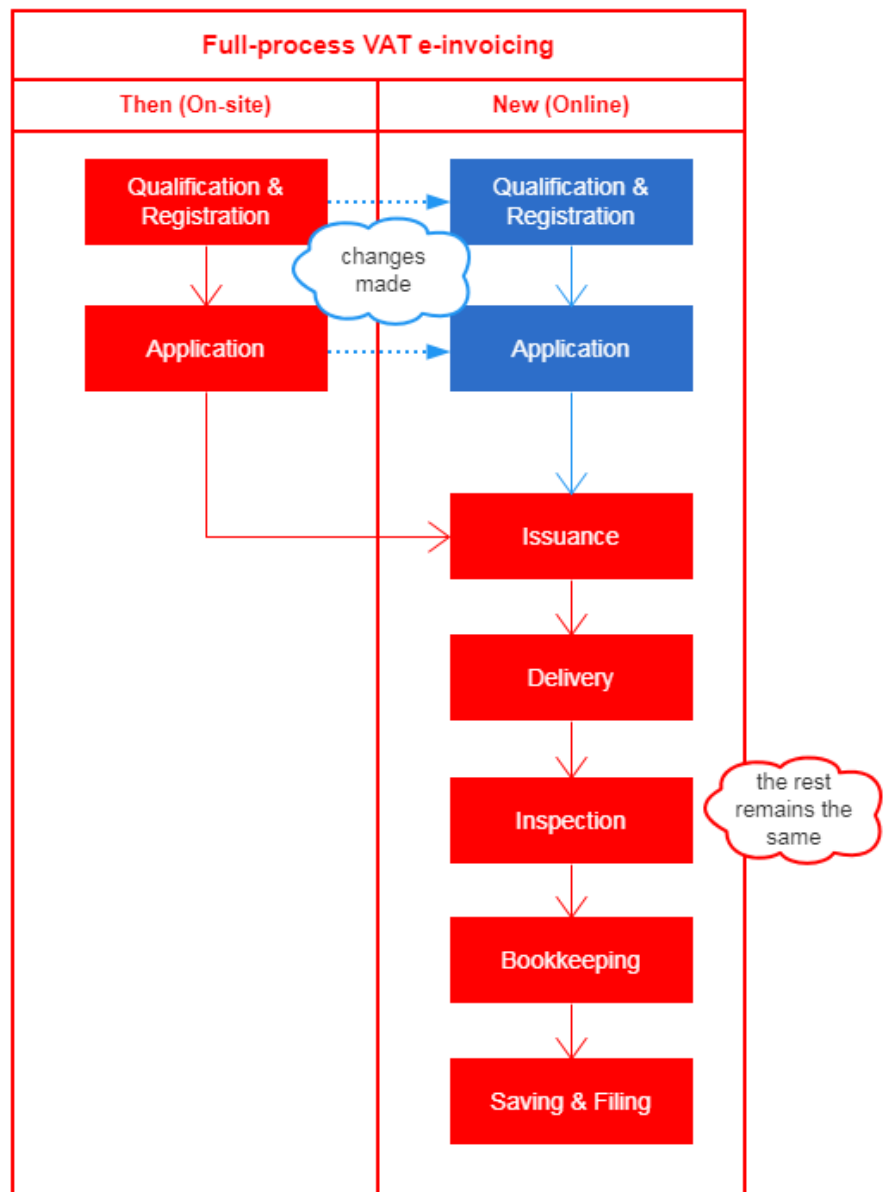
2. Format revised

The format of e-invoices has been simplified to collect only the minimum necessary information.

3. Issuance limitation

The system currently cannot yet issue any e-invoices for sales of special goods such as petroleum, rare-earth elements, automobiles (including second-hand cars), tobacco, exports, and tolls, etc.

Until such functions become available, taxpayers are asked to resort to their current VAT invoice management system for issuing e-invoices for these transactions.



4. Quota setting

A VAT invoice issuer will be subject to a quota management in value terms, based on its current quota and managed as follows:

- The quota will cover the aggregate value of all invoices issued in either paper or electronic format in a month. Taxpayers should be mindful of using the two options under a set quota value; and
- At a later stage, taxpayers still have the option to apply for a higher quota, based on their business status, need, risk level, credit rating, and operation scale, etc.

5. Credit offsetting

Under the pilot program, VAT input crediting involving e-invoices will be performed in two manners:

- For in-program new issuers, VAT input crediting can be recognized via the e-invoicing service platform;
- For non-program taxpayers intending to claim input VAT or tax rebates using any e-invoices they have obtained from in-program taxpayers, they should do so via the comprehensive VAT service platform.

6. Correction or cancellation

The process depends on whether an e-invoice has been claimed as an input VAT credit or not:

- If not yet, it is still possible for its issuer to do a direct correction or cancellation (using a red-titled e-invoice) without the need for a recipient's confirmation in return; or
- If yes already, it requires either the issuer or the recipient to initiate the credit offset process. Upon confirmation by the other party, a "*Credit Invoice Data Confirmation Form*" will be generated, allowing the issuer to amend the e-invoice in full or in part.

WTS China's observation

A full-process VAT e-invoicing would mean convenience, efficiency and integration of sales made and returned, all of which are conducive to a prompt and safe transaction in the following sense:

- It would better facilitate a centralized management of VAT e-invoices for financial analysis, informatize financial management, and strengthen the transparency between taxes and transactions;
- It would enhance corporate compliance, allowing real-time monitoring on every step in the cycle of VAT e-invoicing and identification of abnormality.

Although the program is still in its pilot-run stage, available only to designated taxpayers in piloted regions, SAT nevertheless signals its will to prioritize a full-process VAT e-invoicing practice throughout the country.

Enterprises are advised to consider upgrading their ERP system, in preparation for integrating the e-invoices into their transaction and invoicing systems when VAT e-invoices are fully implemented soon.