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RSM Tax Advisory (Hong Kong) Limited

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CHINA’S VAT LAW & CT LAW (PUBLIC CONSULTATION DRAFTS)

China’s Ministry of Finance (“MOF”) and State Taxation Administration (“STA”) jointly published the drafts of Value Added Tax (“VAT”) Law of the People’s Republic of China (“China”) on 27 November 2019 and Consumption Tax (“CT”) Law of People’s Republic of China on 3 December 2019 for public consultation. In this Tax Flash, we highlight some salient points of these two draft Laws.

Replacing Provisional Regulations by Laws

The prevailing VAT and CT Provisional Regulations were promulgated in December 1993 and have been in force since 1 January 1994. These two turnover taxes have undergone several rounds of important reforms over the past 26 years, and it is now mature to consolidate the reform results and experience in the form of Laws. The drafts were prepared based on the principles of keeping the current tax system framework and level of tax burden generally unchanged. It has been planned that the final drafts would be

submitted to the National People’s Congress for consideration and legislation in 2020.

Value Added Tax Law (Draft)

Some of the salient points include:

Taxpayer

- Sellers and importers of taxable transactions
- Entities and individuals in China as well as those from overseas
- Taxable threshold for sales turnover is adjusted to RMB 300,000 per quarter. For those entities and individuals with quarterly turnover less than RMB300,000, Article 5 of the draft VAT Law says that they are not VAT taxpayers but may voluntarily elect to pay VAT in accordance with the VAT Law. However, it is not yet certain whether this concessionary treatment will apply to overseas taxpayers.

Tax withholding agent (“TWA”)

- For cross-border taxable transactions, the local purchaser may now be the primary

TWA no matter the overseas taxpayer has a business place or business agent in China or not

- VAT to be withheld = Taxable sales value x Tax rate
- State Council may (delegate MOF and/or STA to) designate others as TWA

Scope of charge

- Sale of goods, services, intangible assets, immovable properties and financial commodities in China
- Importation of goods in China
- Deemed sale activities
- At present, if the purchaser of most services and intangible assets is “located in China”, it is regarded as sale in China. Under the draft VAT Law, such determination factor has been removed and it has been added that if the service or intangible asset is “consumed in China”, it will be regarded as sale in China.

Deemed sales activities

- An entity or individual business uses own products for collective welfare or personal consumption
- An entity or individual business donates goods other than for recognized public welfare undertakings
- An entity or a natural person donates intangible assets, immovable properties or financial commodities other than for recognized public welfare undertakings
- Consignment sales, intra-enterprise transfers (e.g. transfer of goods between head office and its branch), in-kind investment/ distribution are no longer regarded as “deemed sales” as these become taxable transactions under the draft VAT Law
- Provision of service at nil consideration is not listed as deemed sales transaction in the current draft but MOF and STA are empowered under Article 11(4) to stipulate further deemed sales transactions

Tax rate and collection rate

- Under the draft, the tax rates remain unchanged at 13%, 9% and 6% as present. Please be reminded that it is China government’s long-term plan to further simplify VAT tax rates into two standard rates. Let’s see if there will be any changes to standard tax rates in the final draft for approval.
- Export sales of goods and certain services and intangible assets may still be at 0%; tax exemption on export sale of goods and services has not been mentioned
- VAT levy rates may be standardized to 3%
- Measures for the calculation and collection of VAT on articles brought by or mailed to individuals will be formulated by State Council

Taxable sales value

- Taxable sales value is defined as any related consideration (including all monetary or non-monetary economic benefits) obtained by the taxpayer
- Article 4 explicitly states that taxable sales value should not include VAT
- Value of deemed sales and non-monetary consideration will be determined according to fair market price
- When the sales value is obviously too low or too high without a reasonable commercial purpose, the tax authorities are empowered to reassess the taxable sales value

Input VAT

- A new requirement is added in the draft such that only VAT paid or borne by a taxpayer upon purchases which are related to the taxpayer’s taxable sales transactions can be claimed as input VAT
- The draft provides that if the input VAT exceeds the output VAT for a tax filing period, the excess may be carried forward to next period or may be refunded. Detailed

measures will be formulated by MOF and STA.

Tax reduction/exemption

- Most of present tax exemption is retained in this draft
- Tax exemption on sale of self-used assets may be limited to sellers who are individuals
- No further tax reduction/exemption may be allowed within 36 months after giving up a tax reduction/exemption item by a taxpayer
- Qualified compensation for expropriation may be regarded as non-taxable transaction

Tax filing period

- Half-year tax period may be added
- Tax filing periods of “1-day”, “3-day” and “5-day” may be cancelled

Exchange of information

Pursuant to Article 44 of the draft, tax authorities, banks, Customs, foreign exchange administration authorities, business registration authorities and other authorities shall establish VAT information sharing exchange and coordination mechanism to strengthen collection and administration of VAT.

Transitional arrangements

State Council may grant a grandfathering period of a maximum of 5 years for the existing VAT policies.

Consumption Tax Law (Draft)

The CT Provisional Regulation has been used since January 1, 1994. It started with tobacco, alcohol, gasoline and diesel oil, etc. as taxable consumer goods, and the taxable scope has been subsequently expanded to include high energy consumption products, high pollution products and some high-end consumer goods.

The salient points of the draft CT Law include:

Taxpayer

- Entities and individuals that sell, commission processing or import taxable consumer goods in China
- CT is payable when a taxpayer self-uses saleable consumer goods

Taxable amounts

- Same as VAT, taxable sales value means any related consideration (including all monetary or non-monetary economic benefits) obtained by the taxpayer
- When the declared value (or quantity) is obviously too low without a reasonable commercial purpose, customs offices are also empowered to reassess the taxable value (or quantity)
- Like VAT, measures for the calculation and collection of CT on articles brought by or mailed to individuals are formulated by State Council

Purchase for continuous production concession

The CT paid for qualified purchases of taxable consumer goods used for continuous production of ten kinds of taxable consumer goods (e.g. golf clubs, solid wood flooring, refined oil, wine, high-end cosmetics) may be credited against CT payable.

Tax filing period

Same as VAT, tax filing periods of “1-day”, “3-day” and “5-day” may be cancelled whereas “half-year” tax period may be added.

Submit comments on the Drafts

You may submit your comments or suggestions on the draft Laws online or by mail before 26 December 2019 (for draft VAT Law) and 2 January 2020 (for draft CT Law).

These are the links to the official websites:

Ministry of Finance

<http://www.mof.gov.cn/gongzhongcanyu/yijianzhengji/>



State Taxation Administration

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

Final drafts of the Laws will be submitted to the Standing Committee of the National People's Congress for review as soon as in 2020. After the approvals of the Laws,

detailed regulations for implementation of the Laws will be announced by State Council.

If you have any questions on the above or if you wish to prepare for the above significant changes, please consult your professional China tax advisors.

RSM Tax Advisory (Hong Kong) Limited

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- Advise on tax efficient holding and operational structures for new cross-border investment, including the formation of Hong Kong and Chinese business entities
- Review existing cross-border investment structures, advise on identified deficiencies, quantify any potential exposure from such deficiencies, and further advise on restructuring approach and procedures
- Assist clients to discuss and clarify matters with tax officials, including transfer pricing and advance rulings
- Act as client representative in tax audits and tax investigations
- Provide transaction support services on mergers and acquisitions, including tax due diligence, deal structure advice, tax health checks, related human resources arrangements and other tax compliance and consultation services
- Advise on human resources and structuring employment arrangements in a tax-efficient manner
- Advise on tax equalization schemes
- Provide tax compliance services for individual and corporate clients in Hong Kong and China

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