China News

April 2017

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I. Catalogue of Industries for Guiding Foreign Investment (2015 Revision) and 2016 Draft

The PRC directs foreign investment inter alia through a so-called Guidance Catalogue, which lists industry sectors and classifies them into categories. Whether or not a particular sector is open to foreign investment depends on how it is categorized. The Guidance Catalogue is updated at regular intervals, in the past around every four or five years. The last version of such Guidance Catalogue was jointly issued by the PRC National Development and Reform Commission (NDRC) and the PRC Ministry of Commerce (MOFCOM) and became effective on 10 April 2015 (2015 Catalogue). The 2015 Catalogue divides industry sectors into three categories: "encouraged", "restricted" and "prohibited". Projects that are not mentioned are deemed "permitted". Each category provides a different level of treatment. Regulatory advantages, such as tax benefits and a less cumbersome local approval process accrue to encouraged projects and, less so, to permitted projects.

Now on 7 December 2016 and after only a little bit more than one year lapsed since the effectiveness of the 2015 Catalogue, NDRC and MOFCOM jointly released the latest revised draft of the 2015 Catalogue.

In addition, on 1 October 2016, a China-wide reform on foreign investment was launched resulting in the removal of the requirement to obtain approval from MOFCOM or its local branches for projects which do not fall within a "negative list". However, no separate negative list has been issued by the government so far. Instead, reference was made to the 2015 Catalogue. To correspond to this negative list approach, NDRC and MOFCOM changed the structure of the 2015 Catalogue and also proposed to relax certain restrictions on a number of industry sectors.

Instead of following the categorization of encouraged, restricted, prohibited and permitted, the major categorization now is aimed at "encouraged" projects and projects falling into the "negative list", with the negative list containing sub-sections for restricted projects (which in part also require a Chinese investment ratio) and for prohibited projects.

In addition, the State Council issued the "Catalogue of Investment Projects Subject to Government Verification and Approval (2016 Version)" on 12 December 2016 and such catalogue became effective on the same day. According thereto, in terms of Foreign Investment Projects, the following applies in terms of the determination of a project either requiring approval and verification by MOFCOM or its local branches or qualifying for "record filing only": Restricted projects with a total investment (including additional investment) of USD 300 million or more as listed in the 2015 Catalogue shall be subject to the verification and approval by the competent investment department of the State Council, of which the projects with a total investment (including additional investment) of USD 2 billion shall be reported to the State Council for record-filing. Restricted projects with a total investment (including additional investment) of less than USD 300 million as listed in the 2015 Catalogue shall be subject to the verification and approval by provincial governments. Foreign investment projects falling outside the aforesaid scopes but falling within the project scopes listed in the "Catalogue of Investment Projects Subject to Government Verification and Approval (2016 Version)" on 12 December 2016 for certain areas of agriculture and water conservancy, energy, transportation, information industry, raw materials, machinery manufacturing, tobacco industry, new and high-end technologies, urban construction and social undertakings shall require approval and verification in accordance with such provisions.

Thus, if at this stage a foreign investor would like to explore if any investment contemplated in China falls within the "negative list" (and if so, requires approval and verification by MOFCOM or its local branches), reference shall be made to this negative list section. This change is probably the most dramatic change compared to any prior versions of the Catalogue of Industries for Guiding Foreign Investment because for the first time, such a negative list section has been introduced. Thus – albeit also certain slight modifications as to the actual allocation of "desired" industries occurred, the major highlight is the re-arrangement of the previously existing categories making it possible to determine more easily which types of projects require approval and verification and which types of projects qualify for "record filing only".

Also, considering the revised draft of the 2015 Catalogue on the one side (which applies only to foreign investment projects) and the "Catalogue of Investment Projects Subject to Government Verification and Approval (2016 Version)" on the other side (which applies to both foreign and Chinese investment), basically two negative lists will have to be considered if dealing with foreign investment projects. While this is a move towards implementing national treatment for foreign investors, it still has to be considered that the negative list section in the revised draft of the 2015 Catalogue is way more complex than the "Catalogue of Investment Projects Subject to Government Verification and Approval (2016 Version)".

Still, on the upside one has to recognize that the China-wide reform on foreign investment, which was launched since 1 October 2016,

brought with it the removal of the requirement to obtain approval from MOFCOM or its local branches for projects which do not fall within a "negative list", which in terms of nominal numbers of foreign investment projects in China should benefit the larger share of such projects.

Thus, China has indeed made a move with these changes to continue to relax foreign investment approval requirements and take measures to gear its investment policy towards national treatment for foreign investors (though arriving at this goal will still take time and further measures to be implemented).

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II. New Regulations on "Quasi-Regional Headquarters" in Shanghai

Already over a decade ago Shanghai had passed special rules for various types of so-called Regional Headquarters (i.e. "Investment/Holding Companies", "Management Companies") established by multinational corporations (MNC) in Shanghai. Also other cities/regions had and have similar sets of rules.

The establishment requirements for these types of companies are rather high, e.g. for a "Management Company" in the aforesaid sense which already has lower establishment requirements compared to an "Investment/Holding Companies". The establishment requirement entail inter alia the following parameters:

- The minimum total assets of the parent company must be at least USD 0.4 billion (or equivalent currency/amount);

and

- The total accumulative registered capital for the parent company's investment already paid in China must be at least USD 10 million and the number of enterprises that the "Management Company" is authorized to manage in- and outside China by the parent company must be at least three;

or

- The number of enterprises that the "Management Company" is authorized to manage in- and outside China by the parent company is at least six;

and

- The registered capital of the "Management Company" must be at least USD 2 million (or equivalent currency/amount).

In mid-February 2017, Shanghai Municipality issued revised rules for these types of special enterprises, i.e. the Regulations on Encouraging Multinational Corporations to Establish Regional Headquarters (Regulations). The aim of such Regulations is to attract foreign investors to establish their regional headquarters in Shanghai even if they do not fulfill the requirements for establishing a "Management Company" or "Investment/Holding Company".

This broader scope is achieved by allowing now so-called "Quasi-Headquarter Entities" (总部型机构) to be established. These are according to the new Regulations wholly foreign owned enterprises (WFOEs) that, despite not meeting the standards for a MNC "Management Company" or "Investment/Holding Company" established by MNCs, wish to provide multiple support service functions, including management decision-making, fund management, procurement, sales, logistics, settlement, research and development, and training in a region that includes more than one country.

Under the new Regulations, the requirements for "Investment/Holding Companies" and "Management Companies" entail among others the following criteria:

- WFOE with independent legal person status;

and

- The minimum total assets of the parent company must be at least USD 0.4 billion (or in cases where the parent company is engaged in the service industry a minimum amount of total assets of USD 0.3 billion);

and

- The total accumulative registered capital for the parent company's investment already paid in China must be at least USD 10 million and the number of enterprises that the company is authorized to manage in- and outside China by the parent company must be at least three;

or

- The number of enterprises that the company is authorized to manage in- and outside China by the parent company is at least six, and;

- The registered capital of the company must be at least USD 2 million.

Under the new Regulations, the requirements for "Quasi Regional Headquarters" (which did not exist as a separate type of enterprise under the old rules before mid-February 2017) entail among others the following criteria:

- WFOE with independent legal person status or branch of WFOE with independent legal person status;

and

- The minimum total assets of the parent company must be at least USD 200 million and it has established and invested in at least two foreign invested enterprises ("**FIEs**") in China with at least one of them registered in Shanghai;

and

- The registered capital of the Quasi-Headquarter company must be at least USD 2 million (or in case of an independent legal person status WFOE branch the operating funds allocated to the branch by the parent WFOE of the branch must be at least USD 2 million).

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III. China's Fight against Capital Outflow

Since mid-2016, increasingly media reports emerged that said the PRC was stepping up efforts to monitor the outflow of capital from China to abroad. This has raised concerns among many foreign investors in China that remittances of dividends and royalties as well as repayment of cross-border loans and settlement of trade transactions would become more difficult – and in the worst case even impossible.

Historically, any cross-border payments to/from China have been more closely controlled than similar payments between many other countries because the Chinese currency RMB is not a freely convertible currency. Hence, there has for decades been a multi-layered legislative framework in China – foremost but not only – issued by the State Administration of Foreign Exchange (SAFE) that regulates if and how funds may enter and more importantly exit the PRC to abroad.

While since the re-opening of Chinese market in the eighties it was mainly foreign companies investing in China that had a concern of remitting money from China to abroad. Now also Chinese companies have a strong interest in a smooth cross-border remittance from China to abroad because otherwise e.g. the heavy investments for overseas acquisitions by Chinese companies would be impaired.

Actual banking practice

When the media coverage about stricter cross-border fund controls emerged, it was at first presumed that these controls would in particular target China's overseas investment controls as well as certain special cross-border cash-pooling arrangements of multi-national companies operating in China and abroad (which both indeed have tightened since). However, also Chinese investors wishing to transfer funds to abroad for their investments outside China are suffering and besides facing obstacles in actually remitting money abroad for M&A transactions. Also other funding mechanisms such as the registration of collateral in China to cover foreign loans ("nei bao wai dai") is affected.

While in writing no particular official measures had been issued either by SAFE nor the People's Bank of China (PBOC) which would have explained the perceived difficulties in recent cross-border payments, many Chinese and foreign banks in China are heard to say that they are asked by SAFE and/or PBOC to control outbound remittances more conscientiously and strictly and to keep a balance between the international inbound and outbound remittances of their banks based on (non-public) quotas. Banks are given these quotas regularly and these quotas are understood to provide that their overseas remittances during a certain period should not exceed a certain percentage of the foreign exchange inflows during the same period.

New legislation

While a lot of the more recent "news" on capital outflow restrictions was based on hearsay, now more and more the officially written legal documentation emerges regarding the captioned matter.

E.g. official measures have been adopted which reinforce the stricter SAFE controls: the threshold for SAFE approvals for payments (including dividends, loans, royalties, etc.) has been reduced from USD 50 million to USD 5 million, meaning that the handling banks now only have decision power for payments of up to USD 5 million.

In addition, in order to promote capital inflow into China and regulate capital outflow, on 26 January 2017 (at the beginning of the Chinese New Year and at a time of minimal public perception) SAFE issued the "*Notice on Further Promoting the Reform of Foreign Exchange Administration and Improving Authenticity and Compliance Review*" (Notice) with the following measures:

Domestic foreign currency loans: These loans can be settled with foreign exchange funds earned from export under trade in goods. In principle, borrowers are not allowed to repay such loans by purchasing foreign exchange against RMB.

Foreign loans secured by domestic guarantees: Funds under such loans may be repatriated directly or indirectly to China for use by ways of disbursing loans in China, equity investment, etc. Where a bank fulfills its liabilities as the guarantor for an overseas loan secured by domestic guarantees, relevant foreign exchange settlement and sale shall be included in the bank's own foreign exchange settlement and sale for management.

Cash pooling: The percentage of the deposits drawn by a domestic bank via a main account for international foreign exchange funds that may be used in the Mainland shall be adjusted to no more than 100 percent, from the current 50 percent, of the average daily deposit balance of the preceding six months. Funds for domestic use shall not occupy a bank's indicator for outstanding short-term external debts.

Import / Export: Domestic institutions shall process foreign exchange receipt and payment for trade in accordance with the princip-

le that "whoever exports shall collect foreign exchanges and whoever imports shall make foreign exchange payments", and handle foreign exchange collection in a timely manner.

Foreign exchange income from foreign trade transactions: A domestic company that, due to various reasons, has retained export earnings or earnings from trade in services overseas but has not gone through relevant registration and record-filing procedures for foreign exchange administration or submitted relevant information shall now promptly report relevant information pursuant to the SAFE "Notice on Printing and Distributing the Regulations on Foreign Exchange Administration over Trade in Goods" (Hui Fa [2012] No. 38) and the SAFE "Notice on Printing and Distributing the Regulations on Foreign Exchange Administration over Trade in Services" (Hui Fa [2013] No. 30).

Dividends exceeding USD 50,000: Banks must verify the profit distribution resolution of the board of directors, the original tax record-filing forms and the audited financial statements, and confirm and seal the original of the tax record-filing form to indicate the amount and the date of this outbound remittance. As long as losses from previous years are not repaid, no overseas profit remittance is allowed.

Chinese outbound investment: The handling banks shall strengthen authenticity and compliance review. In addition to the necessary application documents for such investment projects, the investor has to explain to the bank the sources of the funds for investment and the purposes (use plan) of such funds, and provide relevant resolution of the board of directors, relevant contracts or other materials in proof of transaction authenticity.

RMB coverage of foreign currency loans: Where a domestic company engages in overseas lending, the sum of its outstanding overseas lending in RMB and outstanding overseas lending in foreign currencies shall not exceed 30 percent of its owner's equity in the audited financial statements of the preceding year.

Conclusion

In summary, it is to be noted that complications should currently be expected for cross-border transactions. Delays are to be taken into account both for cash flow management and for contractual arrangements and financing models. Transparency in documentation (for contracts, tax documents, debt collection, etc.) is essential. In individual cases it may be helpful to check the possibility of payments by different banks or at different locations. This all creates concern for companies in terms of the duration and severity of these restrictions themselves as well as the ambiguity surrounding them. Requirements and process times are uncertain and rules seem to differ from city to city and hence jeopardize regular business operations and can cause severe operational disruptions.

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IV. New Regime for Work Permits for Foreigners

On 27 September 2016, the Pilot Implementation Plan of Work Permit for Foreigners (New Work Permit Plan) was issued by the PRC State Administration of Foreign Experts Affairs (SAFEA).

The New Work Permit Plan became effective nationwide as of 1 April 2017.

Major changes and introduction of the new work permit for foreigners

Unified Work Permit

Before the New Work Permit Plan entered into effect, the regime for work permit basically recognized two main categories: a) entry and work permits for foreigners applicable to the majority of regular foreign employees (Z visa); b) work permit for foreign experts (R visa). Under the New Work Permit Plan, these two categories will be merged into one unified "work permit for foreigners". Any previously issued entry and work permits for foreigners and/or work permits for foreign experts will remain valid for their remaining terms but can also be replaced voluntarily to the new "work permit for foreigners" prior to their expiration. With the unified work permits, foreigners working in China will obtain a numbered code which is personalized and remains unchanged perpetually (similar to a US social insurance number or a German tax identification number). Under such number, the foreign employee's employment history in China will be recorded henceforth.

Three-tiered Classification

According to the New Work Permit Plan, a single work permit based on a three-tiered classification system will be introduced. The work permit provides a federal model administered by SAFEA. The three-tiered system classifies foreign employees as A, B, or C level foreign employees. This A, B, and C level classification system takes into account the foreigners' age, education history, salary, time spent working in China, and Chinese language skills etc. and awards points for any such category. Here are some examples on each Class according to the annex of the New Work Permit Plan:

A Level - Top Talents

- Foreigners belong to certain Talents Plans as listed in the New Work Permit Plan, e.g.:
  SAFEA-sponsored: Program for the Introduction of Renowned Overseas Professors; State Nuclear Power Technology Corporation: Program for Introduction of High-Level Foreign Talents; Beijing Municipality-sponsored: Program for Overseas Talents Aggregation;
- Foreigners with internationally recognized professional achievements, e.g. Nobel Prize winners;
- Foreigners holding important positions, e.g. senior management for state-owned key enterprises, Fortune 500 enterprises and certain encouraged foreign invested enterprises (FIEs);
- Innovative talents, e.g. initial shareholders or senior management or chief technical experts of certain technology innovation enterprises;
- Excellent young talents, e.g. graduates (younger than 35 years of

age) from the top 200 foreign universities or Chinese universities with a doctorate degree;

- Foreigners with 85 awards points according to the calculation standard of the New Work Permit Plan.

B Level - Professional Talents

- Foreigners with at least a bachelor's degree, minimum two-year relevant work experience and below the age of 60 (exceptions possible) plus employed as management, professional technician, chief representative, etc.

- Excellent young talents, e.g. graduates from the top 100 foreign universities or Chinese universities with master's degree or above;

- Foreigners with 60 to 85 awards points according to the calculation standard of the New Work Permit Plan.

C Level – Regular Staff

- Foreigners employed under agreements between Chinese and foreign governments or approved/authorized by the relevant administrative department of the State Council;

- Foreign interns employed under inter-governmental agreements;

- Foreigners engaged in housekeeping service accompanying A Level expatriates;

- Foreigners working in special industry sectors such as ocean fishing;

- Foreigners engaged in seasonal works;

- Foreigners with less than 60 awards points according to the calculation standard of the New Work Permit Plan.

There is no publicly available binding legislation stating what the exact consequences are on being considered A, B or C Level. However, A Level foreign employees will seemingly enjoy a favorable application process for their work permit and probably their employers will face no/limited restrictions on hiring such employees. Also, A Level foreign employees are neither subject to maximum age restrictions nor to prior working year requirements. Also, their confirmations of no criminal record do not need to be legalized abroad and they do not need to make a hard-copy application before entering China.

B Level foreign employees will also be probably generally accepted and considered to fit into China's economic development plans, especially in management and technical areas though employers may face certain restrictions in employing such staff.

The employment of C Level foreign employees will probably be most regulated and limited. The employment of foreign employees of this level will be subject to quota control and at current stage no quotas have yet been published, we suppose it is reasonable to presume that these will be published if and as necessary by the government based on market demands.

Work in China - overview of application for work permit

Application outside China
In order to apply for a work permit outside China, the first step is to apply for the "Work Permit Notice". The foreign employee (or his/her employer on his/her behalf) shall submit an application online and upload the required documents to the "service system for foreigners working in China". A preliminary examination of the documents will take place within five working days. After the preliminary examination, the required documents shall be submitted on the spot. After the on-the-spot examination has been passed, a "Notice of Acceptance" will be issued. Within ten working days as of such acceptance, the decision will be made whether the "Work Permit Notice" for the foreign employee will be issued in the online system.

Then, the second step is to apply for a Z-visa or R-visa at the competent Chinese embassy or consulate.

Eventually, after entering China with the appropriate visa, the third step of the application for work permit can be conducted. The foreign employee shall apply for the work permit online within 15 days as of his/her entry to China.

Application inside China
Work permits can be applied for directly by foreign employees in China e.g. in the following cases:

- A Level employees holding other types of visas or a valid residence permit;

- Foreigners working in China changing their employer without change of position/occupation and with a valid residence permit;

- Family members of foreigners working in China holding a valid visa or residence permit.

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V. New PRC - Germany Double Taxation Treaty

The new PRC-Germany Double Taxation Treaty (DTT) was signed on 28 March 2014 and became effective on 6 April 2016 and replaced the previous DTT of 10 June 1985 between China and Germany. The new DTT (like the old one) only applies to the Mainland China but neither applies to the SAR Hong Kong and SAR Macao, nor with respect to Taiwan.

The new DTT applies to income derived on or after 1 January 2017 and results in an extensive revision of the old DTT. Comparing to the old DTT, there are certain key changes in the new DTT as follows:

Dividend Income
Dividends obtained by foreign shareholders out of profits are subject to withholding tax at a rate of 10 percent, unless a relevant DTT

provides a lower tax rate. For example, under the PRC-Hong Kong tax arrangement, the applicable rate is 10 percent or 5 percent (if the beneficial owner is a company which directly holds at least 25 percent of the capital of the company paying the dividends).

With regard to dividends, the new DTT brings advantages and disadvantages for tax payers. According to the old DTT, dividends may be taxed in the source state at a maximum rate of 10 percent. The new DTT allows the source state to tax at the following rates:

- 5 percent of the gross dividend if the beneficial owner (other than a partnership) directly holds at least 25 percent in the capital of the distributing entity;
- 15 percent of the gross dividend if paid from income/gains derived from immovable (real estate) property by certain tax-exempt investment vehicles, annually distributing most of its income/gains;
- 10 percent of the gross dividend in all other cases.

Qualifying shareholdings (25 percent or more) therefore benefit from a significant decrease of source-state taxation (5 percent instead of 10 percent). According to the literal wording of the new DTT, the reduced tax rate of 5 percent would apply to dividends which are paid on or after 1 January 2017. This could be interpreted to mean that – if the requirements for the 5 percent tax rate are met in general – dividends on income accrued before 1 January 2017, but paid out only after such date, could benefit from the lower tax rate. However, from a PRC corporate income tax perspective, not necessarily only the point of time of the actual payment of the dividend is looked at. Tax authorities also may look at the point of time the resolution of the profit distribution was made by the competent enterprise organs or even at the point in time when the income in relation to which the dividend was paid has been accrued. Thus, in practice it will be of utmost importance to see how local tax authorities will treat these cases.

Real estate investment vehicles (e.g. REITs) will be facing an increased treaty rate (15 percent versus 10 percent).

The tax credit method continues to apply to dividends paid from Germany to China. However, an (additional) credit for taxes paid by the distributing entity on its German profits will only be granted if the shareholding amounts to at least 20 percent under the new DTT (10 percent under the old DTT).

The tax credit method continues to apply also for dividends paid from China to Germany. According to the new DTT, Germany will only apply the exemption method if the German company (not including partnerships) directly holds at least 25 percent of the distributing Chinese entity's capital and the dividend did not diminish profits at the level of the distributing entity.

Interest Income

The Chinese withholding tax rate on interest is 10 percent unless a preferential rate is granted in a DTT or other arrangement.

The new DTT provides that interest may be taxed in the source state at a rate of 10 percent of the gross interest. Tax exemptions continue to apply in the source state with respect to interest paid in certain constellations involving governments or governmental (or state) institutions. According to the new DTT the source state has no right to tax if interest is paid in connection with the sale of commercial or scientific equipment on credit. The tax credit method continues to apply on interest – regardless of whether paid from Germany to China or vice versa. As with royalties (see below), Germany will, however, not give credit for fictitious 15 percent Chinese withholding tax on dividends under the new DTT.

Royalty Income

The Chinese withholding tax rate on royalties is 10 percent, unless a DTT provides a lower rate.

Under the new DTT, royalties may be taxed in the source state at a rate of 10 percent of the tax base. However, a reduced tax base (60 percent of the gross royalty) applies under the new DTT with regard to certain qualifying royalties that are paid for the use of industrial, commercial or scientific equipment. Under the new DTT, these qualifying royalties thus benefit from a reduced effective tax rate of 6 percent. The tax credit method continues to apply to royalties – regardless of whether paid from Germany to China or vice versa. However, Germany will not give credit for a fictitious 15 percent Chinese withholding tax on royalties under the new DTT.

Capital Gains

According to Circular No. 698 issued by SAT on 10 December 2009 (effective retroactively to 1 January 2008), indirect transfers of shares or equity in one or more offshore intermediary holding companies that own a PRC resident enterprise may also create PRC tax liabilities. However, if the direct or indirect equity transfer meets the conditions for the special Enterprise Income Tax ("EIT") treatment for an enterprise reorganisation as defined in Circular No. 59 issued by SAT on 30 April 2009 (also retroactively effective as of 1 January 2008), the withholding tax on capital gains can be deferred.

According to the new DTT, capital gains may be taxed in both treaty states:

- if the shares sold derive more than 50 percent of their value from immovable property situated in the other treaty state (i.e. not the state of residence of the seller); or
- if the seller has held at least 25 percent of the shares in the relevant company within a 12 month period prior to sale.

No such provisions are contained in the old DTT. In order to avoid double taxation, both treaty states will apply the tax credit method in these cases.

Permanent Establishment and Business Profits

As was seen in the past, Chinese tax authorities have been rather strict in levying taxes on permanent establishments (PE). Such PEs are a fictional creation (rather than an actual tangible establishment) and can e.g. be created by seconding staff from Germany to China. The new (like the old) DTT differentiates between PEs created in connection with

- building, construction, assembly and or installation projects;

- other service provisions;
- agencies.

Building/Installation PE: Under the new DTT, for building, construction, assembly and or installation projects, a PE is created if the onshore works last more than 12 months (while according to the old DTT, after six months a PE was created). While this may at first sight look like betterment for German enterprises doing business in China, it shall be considered that Chinese tax authorities tend to qualify PEs often as service PEs.

Service PE: The new DTT clarifies that a service PE shall be considered established if the relevant activities continue for more than 183 days within any 12 month period (the old DTT stipulated somewhat ambiguously "longer than six months within any 12 month period").

Agency PE: The old like the new DTT are consistent in that if an agent is empowered and regularly represents a German enterprise to conclude sales contracts in China in the name of that enterprise, the enterprise shall be regarded as having an agency PE in China. However, if the agent is of an independent status, no agency PE shall be constituted. The new DTT clarifies that independent agent status shall be denied if the agent's activities are devoted wholly or almost wholly on behalf of the enterprise from the other country and the commercial and financial conditions between such agent and the enterprise are not made on an arm's length principle.

Taxable Labour Services / Independent Personal Services

Under the old DTT, the source country has the taxation right over independent service income if the services are conducted via a fixed base located in that country or the individual stays in that country for more than 183 days during the relevant calendar year. The new DTT changes the 183 day rule to "183 days in any 12 month period commencing or ending in the relevant fiscal year". Within such stipulation, if a German individual resident provides independent personal services in China (without a fixed base) and stays for more than 183 days in China during the 12 month period, e.g. from 1 June 2017 to 31 May 2018, he/she may be taxed in China for his/her independent personal service income attributable to his/her work in China for all months of the 12 month period commencing on 1 June 2017, even though he/she may not exceed 183 days respectively in 2017 and 2018 on a calendar year basis.

Salaried Employment Income

Also for this income type, the new DTT also modifies the 183 day rule and German employees will be now taxed in China for their employment income if they stay in China for more than 183 days "within any 12 month period commencing or ending in the relevant fiscal year". Under the old DTT, this only applied if a German employee stayed in China for more than 183 days within a calendar year. Thus, if a tax obligation in China for salaried income shall be avoided by German employees, they must (a) make sure to stay in China less than 183 days "within any 12 month period commencing or ending in the relevant fiscal year" and (these being additional obligations under the old/new DTT) (b) make sure that the employment is not paid or borne by a Chinese resident enterprise and is also not borne by a PE or fixed base maintained by the employing unit in China.

This constitutes a tightening of regulations and means that controlling the 183 day period will become more difficult and that any arrangements splitting the 183 days by rolling over some days to a new calendar year will no longer be feasible. Companies which dispatch their German resident employees to work in China shall pay close attention to this change when considering the PRC individual income tax implications of such employees.

Other Provisions

Besides, there is some other important information the tax payers shall pay attention to. For example, the new DTT includes provisions reflecting both countries' determination to enhance their cooperation and tackle aggressive tax planning for treaty benefits purpose (anti-treaty shopping clause). This means that any tax benefits under the new DTT shall not be available if certain transactions or arrangements were mainly aimed to secure a more favourable tax position and obtaining such more favourable tax treatment in these circumstances would be contrary to the object and purpose of the relevant clauses of the new DTT.

Also, compared to the old DTT, information exchange clause were broadened and now information that can be requested from the taxation authority of the other country without the limitation of Article 2 (Taxes Covered). Further, a tax-collecting assistance provision has been included in the new DTT suggesting that the taxation authorities of both countries shall discuss detailed procedures to implement this clause.

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Imprint

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BEITEN BURKHARDT Rechtsanwaltsgesellschaft mbH
Ganghoferstrasse 33, D-80339 Munich
Registered under HR B 155350 at the Regional Court Munich/
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