

CUATRECASAS, GONÇALVES PEREIRA



LEGAL FLASH | SHANGHAI OFFICE

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NOTICE ON TRANSITIONAL FINANCIAL SUPPORT POLICIES TO IMPLEMENT THE PILOT PROGRAM TO REPLACE BUSINESS TAX (“BT”) WITH VAT

(HUCAISHUI [2012] NO.5) (关于实施营业税改征增值税试点过渡性财政扶持政策的通知), ISSUED BY THE SHANGHAI MINISTRY OF FINANCE (“MOF”), THE SHANGHAI NATIONAL TAX BUREAU AND THE SHANGHAI LOCAL TAX BUREAU

These policies offer subsidies to taxpayers participating in the pilot program to replace BT with VAT.

Taxpayers whose tax burden increased after changing to VAT can apply to the financial department for these subsidies. The financial department will follow up with the tax bureau on a monthly basis, review and allocate the subsidies quarterly, and calculate the overall subsidy amount annually.

Date of issue: February 2, 2012. Effective date: February 2, 2012.

CIRCULAR ON THE POLICY FOR DEDUCTING FROM VAT PAYMENTS THE COST OF SPECIAL EQUIPMENT AND TECHNICAL SERVICES PAID WHEN BUYING THE VAT CONTROL SYSTEM

(CAI SHUI [2012] NO.15) (关于增值税税控系统专用设备和技术维护费用抵减增值税税额有关政策的通知), ISSUED BY THE STATE ADMINISTRATION OF TAXATION (“SAT”) AND THE MINISTRY OF FINANCE (“MOF”)

To ease the taxpayers’ tax burden, taxpayers can deduct from their VAT payment the cost of the special equipment and technical services they paid when they bought the VAT control system.

Taxpayers buying the special equipment for the first time after December 1, 2011, can deduct the cost of this equipment and the related input VAT from the output VAT. The technical services paid for after December 1, 2011, and the related input VAT (if any) can also be deducted from the output VAT.

Any amounts not deducted can be carried forward for future deduction. The related input VAT cannot be deducted repeatedly.

Date of issue: February 7, 2012. Effective date: February 7, 2012

NOTICE ISSUING THE <WORKING REGULATION ON THE REPLY TO THE INDIVIDUAL TAX CASE (DRAFT)> BY THE STATE ADMINISTRATION OF TAXATION

(GUOSHUIFA [2012] NO.14) (国家税务总局关于印发《税收个案批复工作规程(试行)》) 的通知),
ISSUED BY THE STATE ADMINISTRATION OF TAXATION (“SAT”)

The reply to the individual tax case refers to the tax bureau’s reply on how to apply tax laws, regulations, rules and normative documents to the specific issues of specific taxpayers as counterpart in an administrative activity, excluding issues requiring the tax bureau’s approval or review.

Replies cannot be issued if:

- The issue is beyond the scope of power of the tax bureau in question;
- the reply contradicts the law; or
- the reply is apparently unfair to other taxpayers in a similar situation.

The taxpayer must first apply to the relevant tax bureau, which reports to the tax authority entitled to issue the reply.

Before a reply can be issued, it must be reviewed by a tax supervisory body. Excluding national secrets, replies must be published in the relevant newspaper or on the relevant website within 30 days of their issue.

Tax bureaus that cannot publish replies in a newspaper or on a website can publish them in a public area within five working days of their issue date.

The Notice also establishes several timelines:

Upper and lower level tax bureaus will have a maximum of five working days to exchange material.

Departments will have a maximum of 10 days to carry out reviews.

The relevant tax bureau will have a maximum of 30 days to carry out investigations and verifications.

These timelines do not include time needed to consult other relevant authorities, but can be extended if the situation is complicated or has a serious social impact.

Date of issue: February 10, 2012. Effective date: March 1, 2012.

PROVISIONS ON REGULATING THE MARKET ORDER OF INTERNET INFORMATION SERVICES

(“PROVISIONS”) (规范互联网信息服务市场秩序若干规定), ISSUED BY THE MINISTRY OF INDUSTRY AND INFORMATION TECHNOLOGY (“MIIT”)

The Provisions aim to regulate *mala fides* competition between internet information service providers (“IISPs”), the protection of user rights and interest, and the protection of user personal information.

Under these Provisions, “users’ personal information” refers to 1) user-related information that can independently identify users, and 2) user-related information that can identify users in combination with other information. IISPs cannot collect the personal information of users or transfer it to others without the users’ consent, unless otherwise provided by law. When IISPs obtain consent from users, they must clearly inform the users of the methods they use to collect and process users’ personal information, and the purpose of that collection and processing. IISPs must not collect any information other than that necessary to provide their services or use users’ personal information for purposes other than to provide their services. IISPs must store users’ personal information correctly. When users’ personal information stored by IISPs is or is likely to be released, IISPs must take immediate measures to protect the information. The Provisions also establish sanctions applicable to IISPs that breach these obligations.

Date of issue: December 29, 2011. Effective date: March 15, 2012.

NOTICE ON CARRYING OUT JOINT ANNUAL CHECK OF FOREIGN-INVESTED ENTERPRISES (“FIES”) IN 2012 (“NOTICE”)

(关于开展2012年外商投资企业联合年检工作的通知), JOINTLY ISSUED BY THE MINISTRY OF COMMERCE (“MOFCOM”), THE MINISTRY OF FINANCE (“MOF”), THE STATE ADMINISTRATION OF TAXATION (“SAT”), THE STATE ADMINISTRATION FOR INDUSTRY AND COMMERCE (“SAIC”), THE NATIONAL BUREAU OF STATISTICS (“NBS”), AND THE STATE ADMINISTRATION OF FOREIGN EXCHANGE (“SAFE”)

Under the Notice, the 2012 annual check of FIEs, to inspect their activity in 2011, will be jointly carried out by MOFCOM, MOF, SAT, SAIC, NBS and SAFE between March 1 and June 30, 2012. FIEs incorporated before 2012 must file for the annual check within this time limit. FIEs that do not file for the annual check within the time limit, provide false information to the authorities or do not engage in their business in line with the law in 2011 will be subject to the sanctions of the relevant authorities.

Date of issue: February 29, 2012. Effective date: March 1, 2012.

ANNOUNCEMENT ON ISSUES RELATING TO IMPLEMENTING THE INDUSTRIAL CATALOG FOR GUIDING FOREIGN INVESTMENT (AMENDED IN 2011) ("2011 CATALOG")

(关于执行〈外商投资产业指导目录(2011年修订)〉有关事宜的公告), ISSUED BY THE GENERAL ADMINISTRATION OF CUSTOMS ("GAC")

Foreign-invested projects (including capital increase projects) classified as "encouraged" in the 2011 Catalog are entitled to an exemption from customs duty, but are subject to import VAT, for self-use equipment imported within the amount of total investment, and any support technology, accessories and parts accompanying the equipment under contracts. However, this exemption does not apply to goods listed in the *Catalog of Imported Goods of Foreign-Invested Projects without Tax Exemption* and the *Catalog of Major Technical Equipment and Products without Import Tax Exemption*.

Date of issue: February 2, 2012. Effective date: January 30, 2012.

GUIDANCE ON MANAGING CORPORATE LEGAL RISKS

(GB/T27914—2011) (企业法律风险管理指南), ISSUED BY THE STANDARDIZATION ADMINISTRATION OF CHINA ("SAC")

The guidance was drafted based on the practical experiences of Chinese companies, e.g., China Mobile, when managing corporate legal risks. It provides methods for companies to recognize, analyze and manage legal risks. It is believed that systematizing the management of companies' legal risks will enhance the competitiveness of Chinese companies in the world economy.

Date of issue: February 1, 2012. Effective date: February 1, 2012.

CHINA INTERNATIONAL ECONOMIC AND TRADE ARBITRATION COMMISSION ("CIETAC") ARBITRATION RULES (2012 EDITION)

(中国国际经济贸易仲裁委员会仲裁规则(2012年版)), ISSUED BY THE CHINA COUNCIL FOR THE PROMOTION OF INTERNATIONAL TRADE ("CCPIT") AND CHINA CHAMBER OF INTERNATIONAL COMMERCE ("CCIC")

Effective from May 1, 2012, the 2012 Edition of CIETAC's Arbitration Rules will replace the current rules that have been in force since May 1, 2005.

The revision of CIETAC's rules took over two years and includes many changes reflecting the trends in international arbitration. The new rules allow greater party autonomy, including choice of place of arbitration, language of arbitration, arbitration rules, arbitrators and governing laws. The new rules also include innovations to procedures, such as the determination of jurisdiction, the triggering of summary procedures, the

suspension of arbitration proceedings, the consolidation of arbitrations, the ordering of interim measures, and the rendering of a conciliation statement.

For cases accepted by CIETAC or its sub-commissions before May 1, 2012, the current rules will apply even though the new rules are in force; however, if both parties agree, the new rules can be applied.

Date of issue: February 3, 2012. Effective date: May 1, 2012.

SHANGHAI INCREASES THE MINIMUM MONTHLY SALARY TO RMB 1,450,

APPROVED BY THE MINISTRY OF HUMAN RESOURCES AND SOCIAL SECURITY (“MHRSS”) AND ANNOUNCED BY SHANGHAI MUNICIPAL GOVERNMENT

Shanghai will increase the minimum monthly salary from RMB 1,280 to RMB 1,450, and increase the minimum hourly wage from RMB 11 to RMB 12.50. The calculation of the minimum monthly salary excludes the monthly social security and housing fund contributions made by employees.

Date of announcement: February 27, 2012. Effective date: April 1, 2012.

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