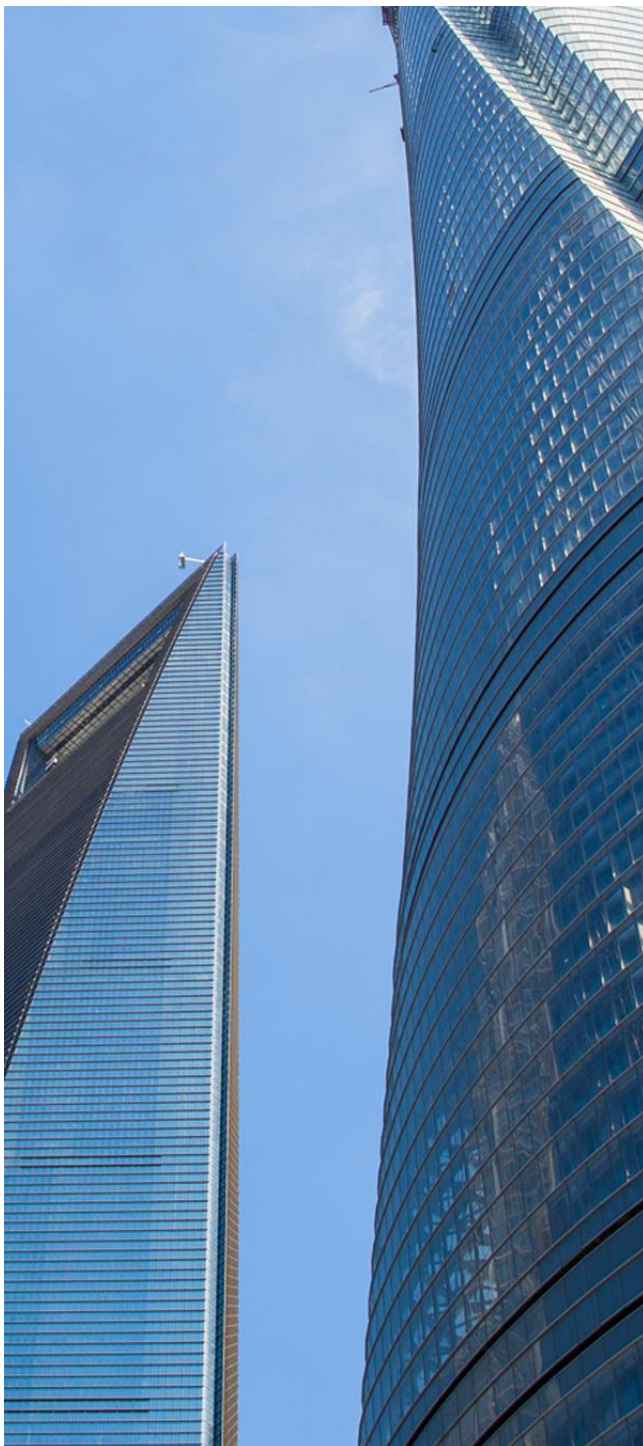

China offices

Legal flash

April 2019

This issue covers legislation published in March 2019



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Administrative Regulations on Technology Import and Export Revised (《技术进出口管理条例》修改)

On March 2, 2019, the State Council enacted the Decision of the State Council on Revising Certain Administrative Regulations (the “Decision”), deleting certain restrictive clauses under the Administrative Regulations on Technology Import and Export, effective the same date.

The Decision removes the restriction on technology import contracts having restrictive clauses that:

- require the grantee to accept additional conditions unnecessary for the technology import;
- require the grantee to pay a fee or assume other obligations for an expired patent or an invalidated patent;
- restrict the grantee from improving the technology supplied by the grantor, or restrict the grantee from using the improved technology;
- restrict the grantee from obtaining a technology similar to that supplied by the grantor from other sources or from obtaining a competing technology; or
- restrict unfairly the channels or sources through which the grantee purchases raw materials, parts and components, products or equipment, or restrict unfairly the quantity, variety, sales price or exporting channel of the products that the grantee produces.

Under the Decision:

- the parties to a technology import contract are free to distribute among themselves the tort liabilities arising from the agreed use of the technology that infringes third parties’ interests; and
- it is no longer required that the technological achievement obtained from subsequent improvements within the term of the technology import contract must belong to the party that made the improvement.



Foreign Investment Law Approved (《外商投资法》通过)

On March 15, 2019, the Second Session of the Thirteenth National People's Congress passed the Foreign Investment Law of the People's Republic of China (the "Foreign Investment Law"), which will come into effect on January 1, 2020.

The Foreign Investment Law will be the main regulation on foreign investment in China (see our special edition of March 2019 for highlights).

We will be looking out for implementation regulations .

Notice on Further Optimizing the Subsidy Policy for Promotion of New Energy Vehicles Published (关于进一步完善新能源汽车推广应用财政补贴政策的通知)

On March 26, 2019, the Ministry of Finance, the Ministry of Industry and Information Technology, the Ministry of Science and Technology and the National Development and Reform Commission (the "Four Departments") jointly published the Notice on Further Optimizing the Subsidy Policy for Promotion of New Energy Vehicles (the "Policy"), effective the same date.

According to the official interpretations published by the Four Departments, the Policy reduces the 2019 subsidies for new energy vehicle ("NEV") purchases by approximately 50% to phase out all subsidies on NEV purchases smoothly by the end of 2020.

Highlights:

- The Policy reduces the subsidies for new energy passenger cars, new energy buses and new energy trucks by different degrees.
- The Policy raises the technical index threshold for receiving subsidies, increasing (i) the energy density threshold of the battery power system for NEV products; (ii) the energy efficiency requirement for NEV products; and (iii) the driving range requirement for battery-powered electric passenger vehicle products.
- The Policy sets a grace period starting from the date of it goes into effect and ending on June 25, 2019. During the grace period, (i) sold and plated NEV products meeting the technical index requirements for 2018 but failing to reach the new requirements for 2019



will retain 10% of the subsidies calculated under the subsidy standards; (ii) sold and plated NEV products meeting the new technical index requirements for 2019 will retain 60% of the subsidies calculated under the subsidy standards for 2018; and (iii) sold and plated fuel cell vehicle products will be subsidized at 80% following the subsidy standards for 2018.

- After the grace period, local governments are not allowed to subsidize NEV purchases (excluding new energy public buses and fuel cell vehicles), but they can subsidize the construction of charging stations and related support services.
- To accelerate the development of the fuel cell vehicles industry and promote the transformation and upgrade of the public bus industry, the Four Departments plan to publish the subsidy policy on fuel cell vehicles and new energy public buses separately.

Supreme People's Court Provisions for Strictly Regulating the Trial Period Extension and Postponing Court Hearings for Civil and Commercial Cases Amended (《最高人民法院关于严格规范民商事案件延长审限和延期开庭问题的规定》修改)

On March 27, 2019, the Supreme People's Court published its Decision on Revising the Provisions Strictly Regulating the Trial Period Extension and Postponing Court Hearings for Civil and Commercial Cases, effective March 28, 2019 (the "Decision").

The third judicial interpretation of the PRC Bankruptcy Law was published simultaneously with the Decision. These two actions by the Supreme People's Court reflect its goal to create a stable, fair, transparent and predictable business environment.

Highlights:

- It clarifies that the "other circumstances that require adjournment" in Item 4 of article 146 of the Civil Procedure Law refer to when a trial hearing cannot be carried out normally due to *force majeure* or an unexpected accident.
- It adds that the People's Court will strictly limit the number of times court hearings can be adjourned. Court hearings for civil and commercial cases subject to ordinary



procedures must not be adjourned more than twice, and those subject to summary procedures and small claims procedures must not be delayed more than once.

- It sets the circumstances in which summary procedures must apply, except for cases not subject to summary procedures established in laws and judicial interpretations: (i) when the facts are evident, the relationship between rights and obligations is definite, and the disputes are minor; and (ii) when the amount involved is below twice the average annual salary of the previous year in the province, autonomous region or municipality.

Individual Income Tax Reform: Length of Residence of Non-Chinese Domiciled Individuals (个人所得税改革：在中国境内无住所的个人居住时间判定)

On March 14, 2019, the Ministry of Finance and the State Taxation released Announcement 34 on the criteria for determining the length of residence of non-Chinese domiciled individuals (“**Announcement 34**”), to better implement the revised Individual Income Tax Law (the “**revised IIT law**”) and its implementing regulation of the People’s Republic of China. Announcement 34 is retroactive to January 1, 2019.

The revised IIT law (i) changed the definition of tax residency for non-Chinese domiciled individuals from the previous full year rule to the 183-day rule; and (ii) extended the 5-year exemption policy applied to foreign-sourced income paid overseas to non-domiciled tax residents living in China to 6 years:

- Presence in China: counting the 183 days

Under Announcement 34, a day will not be counted as a day of residence in China if a non-Chinese domiciled individual is physically present in China less than 24 hours.

This rule benefits non-Chinese domiciled individuals who travel regularly. It will be interesting to see if the 183-day test adopts this rule when determining the existence of a service permanent establishment.

- The six-year rule

Announcement 34 gives further guidance on when the foreign source exemption is applicable: (i) the six-year period starts in 2019; and (ii) from 2019, if they have resided in China for less than 183 days accumulatively or left China for more than 30 consecutive days, the 6-year period starts again.



Date of issue: March 14, 2019. Effective date: January 1, 2019

Individual Income Tax Reform: Chinese-Sourced Salary Income and Non-Domiciled Individuals' Salary Income Calculation (个人所得税改革：所得来源地和无住所个人工资薪金所得收入额计算)

On March 14, 2019, the Ministry of Finance and the State Taxation Administration released the Announcement on Individual Income Tax Policies for Non-Resident Individuals and Non-Domiciled Resident Individuals, Announcement [2019] No. 35, clarifying individual income tax policies for non-resident individuals and non-domiciled individuals (“**Announcement 35**”).

Highlights:

- Under Announcement 35, non-domiciled individuals employed by domestic and overseas companies, or employed overseas, must determine the Chinese-sourced salary based on number of workdays in China.
- Workdays in China include calendar days physically spent in China, public holidays, personal leave and days spent training for the benefit of a Chinese employer, regardless of whether it takes place outside China.
- A stay in China of less than 24 hours is counted as a half workday.
- Announcement 35 establishes several formulas for calculating the taxable income. All the formulas consider (i) whether the income recipient is resident in China for tax purposes; (ii) whether the income recipient is a senior executive; and (iii) the number of days present in China.

Date of issue: March 14, 2019. Effective date: January 1, 2019

Value Added Tax Reform Announced (关于深化增值税改革有关政策的公告)



On March 20, 2019, the Ministry of Finance, State Taxation Administration and General Administration of Customs jointly released Announcement [2019] No. 39, on several policies strengthening the value added tax (“VAT”) reform (“**Announcement 39**”), effective April 1, 2019.

Announcement 39 embodies some of the tax cuts announced by the National People’s Congress on March 5, 2019, to cope with the slower growth of the Chinese economy and to better align VAT rules with OECD principles.

Highlights:

➤ Reduced VAT rates.

The 16% VAT rate applicable to general VAT taxpayers is reduced to 13%, and VAT rate of 10% is reduced to 9%, while the 6% VAT rate is not changed.

This change reduces the overall tax burden and is likely the first step in a comprehensive VAT reform process.

➤ VAT export refund rates updated.

Refund rates will be adjusted to (i) 13% for exports of goods that were subject to VAT at 16%; and (ii) 9% for exports of goods that were subject to VAT at 10%.

➤ VAT refunds of excess input VAT.

Announcement 39 introduces a VAT refund mechanism, subject to fulfilling several requirements, on a trial basis.

This is not the first time a refund mechanism has been introduced on a trial basis; the key question is whether the refund will be a right, or whether it will be limited by the tax authorities’ discretion (i.e., as a requirement for the refund, companies will need to be included in a catalogue of companies drafted by the local bureaus).

➤ VAT super deduction

From April 1, 2019, to December 31, 2021, several service industries can apply a 10% super deduction. The impact of the super deduction will depend on (i) their profit margins; and (ii) the composition of their income.



This rule excludes manufacturers, wholesalers, retailers, financial services companies, transportation companies, and real estate and construction services companies.

- VAT on real estate and construction services

Input VAT credits in full up-front if the purchase is for a taxable purpose.

In addition, the State Taxation Administration released Announcements [2019] No.14 and 15 on matters related to the VAT reform, e.g., (i) invoice issuing adjustments (ii) one time deduction for real estate; and (iii) information required to apply the VAT super deduction.

Date of issue: March 20, 2019. Effective date: April 1, 2019

Consolidated Enterprise Income Tax Returns by Non-Resident Enterprises: Approval Procedures Abolished and Further Clarifications Provided (非居民企业机构、场所汇总缴纳企业所得税：取消审核批准、明确实施办法)

On March 14, 2019, the Ministry of Finance, the State Taxation Administration and the People's Bank jointly issued Announcement [2019] No. 12 ("Announcement 12"), clarifying matters relating to the consolidated payment of enterprise income tax ("EIT") for their own establishments and premises.

Further to the decision of the Seventh Session of the Standing Committee of the Thirteenth National People's Congress abolishing the approval procedures for the consolidated payment of EIT by non-resident enterprises for their establishments and premises, Announcement 12 clarifies the following issues:

- The requirements that should be fulfilled by non-resident enterprises to opt to make tax payments on a consolidated basis;
- How tax authorities will ensure good services to taxpayers through coordinated management;
- When non-resident enterprises can start making EIT payments on a consolidated basis; and
- How to make consolidated payments when non-resident enterprises have gone through the former approval procedure.



Date of issue: March 1, 2019. Effective date: March 1, 2019

Ministry of Finance 2019 Legislative Work Plan (财政部 2019 年立法工作安排)

On March 20, 2019, the Ministry of Finance (“**MOF**”) announced its 2019 Legislative Work Plan. The MOF is expected to modify the following laws and submit them to the State Council in 2019: Value Added Tax Law, Consumption Tax Law, Stamp Duty Tax Law, City Construction Tax Law, Land Appreciation Tax Law and Custom Duties Law.

We will update you on further developments.



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