

# Tax Analysis

PRC Tax

## China relaxes foreign exchange procedures on outbound payments for trade in services

Authors:

Shanghai

Hong Ye

Tel: +86 21 6141 1171

Email: [hoyeqinli@qinlilawfirm.com](mailto:hoyeqinli@qinlilawfirm.com)<sup>1</sup>

Si Wang

Tel: +86 21 2312 7416

Email: [sishwang@deloitte.com.cn](mailto:sishwang@deloitte.com.cn)

For more information, please contact:

International Tax Services

National and Eastern Region

Shanghai

Vicky Wang

Partner

Tel: +86 21 6141 1035

Email: [vicwang@deloitte.com.cn](mailto:vicwang@deloitte.com.cn)

Northern Region

Beijing

Kevin Ng

Partner

Tel: +86 10 8520 7501

Email: [kevng@deloitte.com.cn](mailto:kevng@deloitte.com.cn)

Southern Region

Hong Kong

Sharon Lam

Partner

Tel: +852 2852 6536

Email: [shalam@deloitte.com.hk](mailto:shalam@deloitte.com.hk)

China's State Administration of Taxation (SAT) and the State Administration of Foreign Exchange (SAFE) jointly issued a bulletin in July 2013 (SAT/SAFE [2013] No. 40, (Bulletin 40)) that will ease the administrative procedures for making certain foreign exchange transactions.

The new rules, which will apply as from 1 September 2013, abolish the tax clearance certificate requirement for outbound payments exceeding USD 30,000 (or its equivalent) made with respect to trade in services and other items. Instead, domestic organizations and individuals (Applicants) that make such payments exceeding USD 50,000 (or its equivalent) will be required to submit a "Tax Filing Form" and relevant transaction documents to the competent state tax authorities. A copy of the Tax Filing Form will have to be provided to the bank before an offshore payment can be made.

In conjunction with Bulletin 40, the SAFE issued a circular (Huifa [2013] No. 30 (Circular 30)) that simplifies the administrative procedures for making payments offshore for the services trade and other items, and eliminates the requirement to present a tax clearance certificate to a bank when making a payment offshore for trade in services.

### Background

Under existing rules (e.g. Huifa [2008] No. 64 and other circulars), an Applicant wishing to make a payment offshore for trade in services and other items exceeding USD 30,000 is required to obtain a tax clearance certificate from the competent state and local tax authorities before the payment is made. The tax certificate must be provided to the relevant bank to make the payment.

Obtaining a tax clearance certificate is not always a straightforward process, particularly if the Applicant and the competent state and local tax authorities are unable to reach an agreement on the relevant tax treatment of the payment. Consequently, cash can become "trapped" in China due to the inability to make such payments offshore timely.

The issuance of Bulletin 40 and Circular 30 eliminate the need for an advance "review" by the tax authorities before a payment exceeding USD 30,000 is to be made offshore for trade in services and other items, and the introduction of the tax reporting requirement (which also increases the monetary threshold to USD 50,000 (or its equivalent)) simplifies the administrative procedures.

<sup>1</sup> Qin Li China Lawyers is part of the Deloitte global network.

## Highlights of Bulletin 40

1. Types of payments that require tax reporting – The types of payments that must be reported under the new rules generally are consistent with the current rules regulating payments that require a tax clearance certificate (see Appendix 1). Similarly, payments that will not be subject to the tax reporting requirement generally are the same as those not requiring a tax certificate under current rules.
  2. Competent tax authorities – The new rules will require an Applicant to report only to the competent state tax authorities (rather than both state and local tax authorities). The competent state tax authorities will stamp the Tax Filing Form and return one stamped copy to the Applicant and deliver another copy to the competent local tax authorities. After the tax reporting procedure is completed, the Applicant must provide the stamped Tax Filing Form to the bank in order to make a payment offshore.
  3. Documents – An applicant will be required to provide three copies of the Tax Filing Form and copies of relevant transaction documents (e.g. contracts with an official seal, etc.) to the state tax authorities. Transaction documents also have to be submitted under current rules.
  4. Multiple payments – If multiple payments are required for the same contract, the Applicant must submit a Tax Filing Form for each payment. However, the relevant transaction documents only have to be submitted with the first tax reporting. Under current rules, a tax clearance certificate is required for each payment exceeding USD 30,000.
  5. Review timeline – The state (and/or) local tax authorities will be required to review the tax treatment of the relevant payment within 15 working days after the Tax Filing Form and accompanying transaction documents are submitted. If necessary, the authorities can request additional information from the Applicant. The review will focus on the following areas:
    - Whether the information reported is consistent with the actual outbound payment;
    - Whether relevant taxes have been paid in accordance with Chinese law; and
    - Whether any tax reductions or exemptions applied are in accordance with relevant tax laws and applicable tax treaty.
- The rule seems to suggest that competent state or local tax authority is not required to render their decision on the tax treatment on the payment within 15 working days.
6. Effective date – Bulletin 40 and Circular 30 will apply as from 1 September 2013.

Although the tax certificate will no longer be required, Applicants will not be relieved from any of their normal tax obligations, such as tax registration, tax reporting, tax withholding and document reporting (if any) as required under relevant tax laws and regulations. Failure to comply with these rules could result in the tax authorities recovering any unpaid tax and imposing penalties.

Bulletin 40 is mainly a change in administrative emphasis to enable domestic entities to make outbound payments in a timely manner. It does not exempt the taxpayer or the withholding agent from their tax obligations. It also encourages the competent tax authorities to focus on a review of the tax-related matters after a tax reporting is made by an Applicant.

## Appendix 1

The types of outbound payments that are subject to tax reporting under Bulletin 40 include most payments relating to income (other than those relating to trade in goods) derived by foreign organizations and individuals from China, such as the following:

- Income from services
  - transportation;
  - tourism;
  - communication;
  - construction, installation and contracted labor services;
  - insurance services;
  - financial services;
  - computer and information services;
  - licensing of patents, know-how, copyrights, etc., and franchising;
  - culture, sport and entertainment services;
  - other commercial services; and
  - government services.
- Salaries and wages;
- Dividends and profits;
- Direct debt interest;
- Guarantee fees;
- Rent paid under finance leases;
- Income from real estate transfers; and
- Income from equity transfers.

Where a foreign investor reinvests legitimate income obtained through a direct investment in China and the amount of a single reinvestment exceeds USD 50,000 (or its equivalent), a similar tax reporting obligation arises, as stipulated in Bulletin 40, even though no outbound payment is being made.

Note: Contents discussed in this Tax Analysis pertains to Deloitte International Tax Services

Tax Analysis is published for the clients and professionals of the Hong Kong and Chinese Mainland offices of Deloitte China. The contents are of a general nature only. Readers are advised to consult their tax advisors before acting on any information contained in this newsletter. For more information or advice on the above subject or analysis of other tax issues, please contact:

#### Beijing

Kevin Ng  
Partner  
Tel: +86 10 8520 7501  
Fax: +86 10 8518 7501  
Email: [kevnng@deloitte.com.cn](mailto:kevnng@deloitte.com.cn)

#### Hong Kong

Sarah Chin  
Partner  
Tel: +852 2852 6440  
Fax: +852 2520 6205  
Email: [sachin@deloitte.com.hk](mailto:sachin@deloitte.com.hk)

#### Shenzhen

Constant Tse  
Partner  
Tel: +86 755 3353 8777  
Fax: +86 755 8246 3222  
Email: [contse@deloitte.com.cn](mailto:contse@deloitte.com.cn)

#### Chongqing

Claude Gong  
Partner  
Tel: +86 23 6310 6206  
Fax: +86 23 6310 6170  
Email: [clgong@deloitte.com.cn](mailto:clgong@deloitte.com.cn)

#### Jinan

Eunice Kuo  
Partner  
Tel: +86 531 8518 1058  
Fax: +86 531 8518 1068  
Email: [eunicekuo@deloitte.com.cn](mailto:eunicekuo@deloitte.com.cn)

#### Suzhou

Frank Xu / Maria Liang  
Partner  
Tel: +86 512 6289 1318 / 1328  
Fax: +86 512 6762 3338  
Email: [frakxu@deloitte.com.cn](mailto:frakxu@deloitte.com.cn)  
[mliang@deloitte.com.cn](mailto:mliang@deloitte.com.cn)

#### Dalian

Frank Tang  
Partner  
Tel: +86 411 8371 2888  
Fax: +86 411 8360 3297  
Email: [ftang@deloitte.com.cn](mailto:ftang@deloitte.com.cn)

#### Macau

Quin Va  
Partner  
Tel: +853 8898 8833  
Fax: +853 2871 3033  
Email: [quiva@deloitte.com.hk](mailto:quiva@deloitte.com.hk)

#### Tianjin

Jason Wu  
Partner  
Tel: +86 22 2320 6680  
Fax: +86 22 2320 6699  
Email: [jassu@deloitte.com.cn](mailto:jassu@deloitte.com.cn)

#### Guangzhou

Constant Tse  
Partner  
Tel: +86 20 8396 9228  
Fax: +86 20 3888 0121  
Email: [contse@deloitte.com.cn](mailto:contse@deloitte.com.cn)

#### Nanjing

Frank Xu  
Partner  
Tel: +86 25 5791 5208  
Fax: +86 25 8691 8776  
Email: [frakxu@deloitte.com.cn](mailto:frakxu@deloitte.com.cn)

#### Wuhan

Justin Zhu  
Partner  
Tel: +86 27 8526 6618  
Fax: +86 27 8526 7032  
Email: [juszhu@deloitte.com.cn](mailto:juszhu@deloitte.com.cn)

#### Hangzhou

Qiang Lu  
Partner  
Tel: +86 571 2811 1901  
Fax: +86 571 2811 1904  
Email: [qilu@deloitte.com.cn](mailto:qilu@deloitte.com.cn)

#### Shanghai

Eunice Kuo  
Partner  
Tel: +86 21 6141 1308  
Fax: +86 21 6335 0003  
Email: [eunicekuo@deloitte.com.cn](mailto:eunicekuo@deloitte.com.cn)

#### Xiamen

Lynch Jiang  
Partner  
Tel: +86 592 2107 298  
Fax: +86 592 2107 259  
Email: [ljiang@deloitte.com.cn](mailto:ljiang@deloitte.com.cn)

#### About the Deloitte China National Tax Technical Centre

The Deloitte China National Tax Technical Centre ("NTC") was established in 2006 to continuously improve the quality of Deloitte China's tax services, to better serve the clients, and to help Deloitte China's tax team excel. The Deloitte China NTC prepares and publishes "Tax Analysis", "Tax News", etc. These publications include introduction and commentaries on newly issued tax legislations, regulations and circulars from technical perspectives. The Deloitte China NTC also conducts research studies and analysis and provides professional opinions on ambiguous and complex issues. For more information, please contact:

#### National Tax Technical Centre

E-mail: [ntc@deloitte.com.cn](mailto:ntc@deloitte.com.cn)

#### Eastern Region

Leonard Khaw  
National Leader & Partner  
Tel: +86 21 6141 1498  
Fax: +86 21 6335 0003  
Email: [lkhaw@deloitte.com.cn](mailto:lkhaw@deloitte.com.cn)

#### Northern Region

Angela Zhang  
Partner  
Tel: +86 10 8520 7526  
Fax: +86 10 8518 1326  
Email: [angelazhang@deloitte.com.cn](mailto:angelazhang@deloitte.com.cn)

#### Southern Region

Davy Yun  
Partner  
Tel: +852 2852 6538  
Fax: +852 2520 6205  
Email: [dyun@deloitte.com.hk](mailto:dyun@deloitte.com.hk)

If you prefer to receive future issues by soft copy or update us with your new correspondence details, please notify Wandy Luk by either email at [wanluk@deloitte.com.hk](mailto:wanluk@deloitte.com.hk) or by fax to +852 2541 1911.

#### About Deloitte

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see [www.deloitte.com/cn/en/about](http://www.deloitte.com/cn/en/about) for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

Deloitte provides audit, tax, consulting, and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries, Deloitte brings world-class capabilities and high-quality service to clients, delivering the insights they need to address their most complex business challenges. More than 200,000 Deloitte professionals are committed to becoming the standard of excellence.

#### About Deloitte in Greater China

We are one of the leading professional services providers with 21 offices in Beijing, Hong Kong, Shanghai, Taipei, Chongqing, Dalian, Guangzhou, Hangzhou, Harbin, Hsinchu, Jinan, Kaohsiung, Macau, Nanjing, Shenzhen, Suzhou, Taichung, Tainan, Tianjin, Wuhan and Xiamen in Greater China. We have nearly 13,500 people working on a collaborative basis to serve clients, subject to local applicable laws.

#### About Deloitte China

In the Chinese Mainland, Hong Kong and Macau, services are provided by Deloitte Touche Tohmatsu, its affiliates, including Deloitte Touche Tohmatsu Certified Public Accountants LLP, and their respective subsidiaries and affiliates. Deloitte Touche Tohmatsu is a member firm of Deloitte Touche Tohmatsu Limited (DTTL).

As early as 1917, we opened an office in Shanghai. Backed by our global network, we deliver a full range of audit, tax, consulting and financial advisory services to national, multinational and growth enterprise clients in China.

We have considerable experience in China and have been a significant contributor to the development of China's accounting standards, taxation system and local professional accountants. We provide services to around one-third of all companies listed on the Stock Exchange of Hong Kong.

This publication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively the "Deloitte Network") is by means of this publication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this publication.