



# Tax Newsflash

China

Deloitte Tohmatsu Tax Co.

May 19, 2015

## SAT Issues New Guidance Following Elimination of Tax-related Administrative Approvals

On 17 April 2015, China's State Administration of Taxation (SAT) issued Bulletin 22 (Bulletin [2015] No. 22) to amend three previously issued SAT documents. Bulletin 22's issuance was in response to the cancellation of four tax administrative approval/registration requirements by two State Council decisions earlier this year: The "Decision of the State Council to Abolish and Adjust Certain Administrative Approval Requirements" (Guofa [2015] No. 11) and "Decision of the State Council to Abolish Certain Administrative Approval Requirements or to Delegate Certain Items to Lower Authorities" (Guofa [2014] No. 5). Bulletin 22 will apply as from 1 June 2015.

### (1) Details

We highlight two key amendments of Bulletin 22 below:

- 1) Article 9 of Circular [2010] No. 19: Administrative Measures for the Assessment and Collection of Enterprise Income Tax (EIT) on Nonresident Enterprises on a Deemed Income Basis

Prior to the amendment of Bulletin 22, a nonresident enterprise that intends to be taxed on a deemed income basis must complete an Assessment Form and submit the form to its

competent tax authority to obtain approval. After the amendment of Bulletin 22, a nonresident enterprise is no longer required to submit the assessment form proactively to the tax authority. Instead, it is the competent tax authority that is required to provide the nonresident enterprise with the Assessment Form on a timely basis. However, what is considered timely is not defined in Bulletin 22. This amendment is consistent with Article 35 of the Tax Collection and Administration Law, which grants tax authorities the right to adopt a deemed income method in determining tax payable under certain circumstances. This amendment also seems to suggest that a nonresident enterprise will no longer be able to elect the deemed method proactively.

- 2) Article 7 of Bulletin [2013] No. 72: Bulletin on the Special Reorganization Tax Treatment of Share Transfers by a Nonresident Enterprise

Prior to the amendment of Bulletin 22, a nonresident enterprise that has conducted cross-border transactions cannot enjoy the special reorganization treatment for tax purposes (i.e., tax free or deferred treatment) if the enterprise did not perform the registration of the transaction with the responsible PRC tax

authority timely. This would be true even if the nonresident enterprise satisfies all the substantive requirements for the special reorganization tax treatment.

This registration requirement has caused many taxpayers to lose the special reorganization tax treatment because of their failure to register timely. After the amendment of Bulletin 22, a nonresident enterprise will not automatically lose the special reorganization tax treatment in this situation. Instead, the responsible authority will be required to review the case based on the substantive requirements while asking the enterprise to perform the necessary registration.

Bulletin 22 does not have any special provisions for transactions that occurred prior to its effective date but for which registration was not done timely. It remains to be seen whether the local tax authorities will grant "amnesty" to such transactions in respect of the registration requirement.

## **(2) Deloitte comments**

The issuance of Bulletin 22 is consistent with the State Council's mandate to streamline and reduce administrative approvals, some of which lack a clear legal basis. We expect to see more progress in this area. For instance, on 4 May 2015, the State Council further abolished around 50 tax-related administrative approvals in Guofa [2015] No. 27. An important abolition is the pre-approval for obtaining treaty benefits. Given this trend, taxpayers will need to change their mindsets to adapt to the new tax administration environment.

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