

Broadening horizons

China Newsletter

Latest News on law, tax and business in China

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中国签署转让定价国别报告交换协议

Frances Gu, Rödl & Partner 中国上海

2016年5月12日，中国在北京举行的税收征管论坛上签署了《转让定价国别报告多边主管当局间协议》（“国别报告交换协议”）。至此已有39个国家同意加入国别报告交换协议，这些国家包括含大部分欧洲国家（包括德国）和日本在内的发达国家，也包括中国、印度、墨西哥等发展中国家。

根据税基侵蚀和利润转移（BEPS）项目中的第13项行动计划的建议，跨国集团总部或其指定的关联公司应准备转让定价国别报告，且根据国别报告交换协议，签署国将自动双边交换转让定价国别报告。该机制的实行将允许各国税务部门了解跨国企业集团在全球如何就其营运进行架构以及如何对价值链的各个环节进行利润分配。

国别报告门槛

BEPS项目第13项行动建议，全球合并收入超过7.5亿欧元的跨国企业集团有资料报送的义务。根据去年国税总局发布的新转让定价规定修订征求意见稿，中国需准备国别报告的门槛为50亿元人民币。

执行时间

BEPS项目第13项行动建议，从2016财政年度开始实施国别报告，即应在2017年12月31日前向主管税务机关报送2016年度的转让定价国别报告信息。此外，根据国别报告交换协议，2016年度的国别报告信息预计于2018年在有关协议签署国税务部门之间进行自动交换。

我们的观察

中国国税总局此前已长期表示其对于使用利润分割法进行转让定价调查的偏向，如今加入“国别报告交换协议”将更有利于国税总局获取更多信息来使用利润分割法。根据已发布的新转让定价规定修订征求意见稿，中国以后将会同样遵循BEPS行动所要求的核心文档加本地文档的模式。因此，集团各子公司准备的

China Participates into the Country-by-Country (“CbC”) Reporting Exchange Agreement

Frances Gu, Rödl & Partner Shanghai, China

On May 12, 2016, China signed the Multilateral Competent Authority Agreement for the automatic exchange of CbC reports (“CbC MCAA”) in the Forum on Tax Administration (“FTA”) held in Beijing. So far, there are 39 countries agreed to participate in the CbC MCAA, which includes both the developed countries such as majority of the European countries (including Germany) and Japan as well as developing countries such as China, India and Mexico.

The CbC reporting is required to be prepared by the HQ of the group or its delegated affiliate and the CbC MCAA allows all participants to bilaterally and automatically exchange the CbC reports, as contemplated by Action 13 of the BEPS (“Base Erosion and Profit Shifting”) Action Plan. The implementation of this mechanism will allow tax administrations to obtain the complete understanding on how MNEs structure their operations worldwide and allocates the profits over the value chain.

Threshold of the CbC reporting

Action 13 of BEPS recommends that the threshold as MNEs with a global consolidated revenue over Euro 750 million. According to the previous draft version of the new Transfer Pricing (“TP”) regulation issued by the Chinese State Administration of Taxation (“SAT”) last year, the threshold is set as RMB 5 billion in China.

Time of enforcement

Action 13 of BEPS recommends the implementation of the CbC reporting from Fiscal year 2016, which should be submitted to its competent authority by December 31, 2017. According to the CbC MCAA, the FY2016 CbC reports are expected to be exchanged automatically between the tax administrations of all participants in 2018.

Our view

The SAT has long expressed its opinion on the preference of Profit Split Method (“PSM”) for TP investigations. The participation into the CbC MCAA will for sure allow SAT to have more information for the PSM application in the future. According to the draft version of the new TP regulation issued, China will also follow the Master TP file plus the local TP file Model as

转让定价文档间出现的相悖信息将可能同时导致来自双方税务机关的质疑。

我们将积极协助跨国企业及早关注这个问题并采取必要的措施，以完善转让定价文档。首先应审阅此前集团各子公司所准备的转让定价地方文档以发现其中存在的矛盾之处，并制定相关方案以统一各地文档并针对此前出现的重大差异准备相关解释。

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contemplated by the BEPS Actions in the future. Therefore, discrepancy between the TP documentation prepared by subsidiaries of the group may lead to challenges from both authorities in the future.

MNEs should consider this issue in advance and to introduce necessary measurement to prepare doubtless TP documentation. Rödl & Partner would like to support MNEs in this regard. As first step, reviews on previous local TP documentation prepared for identifying the discrepancies as well as finding out a solution on how to unify them and also reasonable explanations on the previous significant discrepancy made may be needed.

国家税务总局进一步惩戒涉税违法行为

Frances Gu, Rödl & Partner 中国上海

2015年4月16日，国家税务总局修订了《重大税收违法案件信息公开办法（试行）》（“修订办法”），旨在进一步规范税收征管秩序，惩戒涉税违法行为，修订办法自2016年6月1日起执行。

修订办法主要有以下几方面的修改：

重大税收违法案件标准的修改

- > 针对纳税人通过以下手段偷税案件标准由“查补税款金额500万元以上，且占应纳税额百分之十以上”降低为“查补税款金额100万元以上，且任一年度查补税额占当年各税种应纳税总额10%以上”：

Strengthened Penalty on Tax Violation in China

Frances Gu, Rödl & Partner Shanghai, China

On April 16, 2015, the SAT issued the “Revised Measures for Disclosure of Information on Serious Tax Violation Cases”, aiming to step up its efforts in regulating the law enforcement practice while combating and punishing tax violation. The Revised Measures will come into effect on June 1, 2016.

The major modifications are as follows:

Modification in the threshold of serious tax violation cases

- > The threshold is changed from the original “RMB 5 million and the evaded tax accounts for more than 10 percent of the total taxes payable” to “RMB 1 million and the evaded tax of any year accounts for more than 10 percent the total taxes payable of all taxes that year”, where any taxpayer fails to pay or underpays the amount of taxes

- 伪造、变造、隐匿、擅自销毁账簿、记账凭证;
 - 在账簿上多列支出或者不列、少列收入;
 - 经税务机关通知申报而拒不申报;
 - 进行虚假的纳税申报。
- > 纳税人欠缴应纳税款，采取转移或者隐匿财产的手段，妨碍税务机关追缴欠缴的税款的，逃避缴纳税款案件标准由“查补税款金额 500 万元以上”调整为“欠缴税款金额 100 万元以上”；
- > 骗取出口退税及虚开增值税专用发票案件由“虚开税款数额 1000 万元以上”调整为不设金额限制；
- > 虚开普通发票案件的公布标准由“票面额累计 5000 万元以上的”调整为“虚开普通发票 100 份或者金额 40 万元以上的”；
- > 增加了私自印制、伪造、变造发票，非法制造发票防伪专用品，伪造发票监制章的案件，不设标准限制。
- payable by means of:
- forging, altering, concealing or destroying account books or vouchers for the accounts without authorization;
 - overstating expenses, omitting or understating incomes in account books;
 - refusing to file tax returns after receiving the notification of tax authorities;
 - filing false tax returns.
- > Where any taxpayer does not pay the taxes due and adopts the means of transferring or concealing his property to hinder the tax authorities from collecting the amount of taxes in arrears, the threshold is changed from the original evaded taxes of RMB 5 million to RMB 1 million;
- > Where any taxpayer falsely makes out invoices for value-added tax or any other invoices to obtain tax refund for exports, the threshold is no longer subject to the amount while previously there is a threshold of falsely invoiced tax amount of RMB 10 million;
- > Where any taxpayer falsely makes out general invoices, the threshold is changed from “accumulated invoiced value over RMB 50 million” to “100 copies of falsely made general invoices or the total invoiced value over RMB 400,000”;
- > Add one new criterion regarding unauthorized printing, forgery or altering of invoices, illegal manufacturing of anti-forgery product for invoices, and forgery of invoice supervision seal, which is not subject to any threshold.

加大惩戒力度

- > 在公布法定代表人、负责人信息的基础上，公布内容增加“法院判决确定的实际责任人”（实际股东）、“和负有直接责任的涉税中介机构及从业人员”的信息；
- > 纳税信用等级直接判为 D 级，加强对企业日常经营的监管；
- > 对欠缴查补税款的纳税人或者其法定代表人在出境前未结清应纳税款、滞纳金或者提供纳税担保的，税务机关可以通知出入境管理机关阻止其出境。
- ### Strengthened penalties
- > Expanded public disclosure information to also include the “actual responsible person (i.e. actual shareholder) determined by the court” and “the directly responsible tax agencies and its practitioners” besides the original information of the legal representative and responsible person;
- > The tax credit level of taxpayer will be directly downgraded as Level D for a strengthened administration in all aspects of the Company’s operation;
- > Clarify that both the individual taxpayer with outstanding tax payments as well as the legal representative of the company with outstanding tax payments are prohibited to leave the territory of China.

我们的观察

此次修订办法的发布，可见国税总局严惩涉税违法行为的决心。修订办法进一步降低了偷税、骗取出口退税、虚开增值税发票的金额标准，对企业无疑提出了更高的合规要求。一旦被判为 D 级，将对企业生产经营的各个方面事宜（海关、工商管理局、外汇管理局）产生一定的影响。因此，我们建议企业应当对纳税合规性进行定期检查，加大日常监管的力度，避免严重涉税违法行为。

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营改增全面实施

Kelly You, Rödl & Partner 中国上海

2016 年 5 月 1 日，随着房地产业、建筑业、金融保险业、生活服务业正式纳入增值税征税范围，为期 4 年多的营改增试点活动终于在全国范围内全面实施。自此，营业税正式从中国的税制中退出，中国增值税的抵扣链进一步扩大。

财政部、国家税务总局发布的《关于全面推开营业税改征增值税试点的通知》（财税[2016]36 号）从 2016 年 5 月 1 日生效，为全面营改增提供了具体政策。新政策确定了以下几个主要内容：

Our View

The release of the revised measures is doubtlessly signaling the determination of SAT to tackle tax violation. The Revised Measures further lower the threshold of tax evasion, defrauding export refund, and falsely making out VAT invoices, thus putting forward higher requirements on compliance for taxpayers. Once the tax credit level is downgraded to Level D, various aspects of the daily operation of an enterprise will be impacted (such as administration and supervision from the Customs, Administration of Industry and Commerce and Administration of Foreign Exchange). As such, it is recommended that the taxpayers should carry out regular inspection on tax compliance and step up routine monitoring system so as to avoid any serious tax violations.

VAT Reform Fully Implemented in China

Kelly You, Rödl & Partner Shanghai, China

On May 1, 2016, the Value Added Tax (“VAT”) reform program, which has been lasted over 4 years, is completely launched in all over China with the industries of real estate, construction service, finance & insurance service and personalized service are involved into the VAT scope. Since then, Business tax has been entirely phased out from the Chinese tax regime and the VAT deduction chain would further extended in China.

The SAT and the Finance Ministry jointly issued the Circular on Comprehensively Promoting the Pilot Program of the Collection of Value-added Tax in Lieu of Business Tax (Cai Shui [2016] No.36), which has been entered into force from May 1, 2016. This new circular provides the detailed polices for the fully implemented VAT reform program. The following key issues have been constituted in the new regulation:

规定了各行业适用的增值税税率

- > 提供建筑、不动产租赁服务，销售不动产，转让土地使用权，税率为 11%；
- > 提供生活服务、金融保险服务，税率为 6%。

进项税抵扣的特殊规定

- > 2016 年 5 月 1 日后取得的不动产，其进项税自取得之日起分 2 年从销项税额中抵扣，第一年抵扣比例为 60%，第二年抵扣比例为 40%。
- > 购进的旅客运输服务、贷款服务、餐饮服务、居民日常服务和娱乐服务增值税不得抵扣。

营改增试点过渡政策

- > 免征增值税项目如教育等。
- > 建筑业、房地产业可选择简易征收办法。

跨境服务

- > 跨境服务享受增值税零税率或免税政策需满足相关适用规定。

我们的观点

营改增的全面实施对大部分企业来说都是利好消息，企业的综合税负将普遍降低。

企业应分析政策对于所有业务增值税处理的影响，在核算系统中实现价税分离，准确地进行会计核算。对重大的投资决策如购置房产等应将增值税进项税影响作为参考因素。企业应重新审阅已签订的合同，明确增值税是否转嫁，要求供应商尽量提供增值税专用发票用以抵扣，这其中也包括出差时应尽量索取住宿费等的增值税专用发票用以抵扣。

Stipulate the applicable VAT rate for the industries

- > To provide services related to construction, leasing of immovable property, sell real estate, or transfer land use rights, the tax rate is 11%;
- > To provide personalized service and financial and insurance service, the tax rate is 6%.

Special regulation on input VAT deduction

- > For the real estate acquired by VAT taxpayers after May 1, 2016, the input VAT shall be deducted by the output VAT by two years as of the date of acquisition, with the deducted percentages being 60% and 40% respectively in the first year and second year.
- > The input VAT for purchased passenger transportation services, loan services, catering services, daily resident services and entertainment services cannot be deducted from output VAT.

Transitional policies for VAT reform

- > VAT exemption projects such as education service.
- > Simple levy method is applied for construction industry and real estate industry.

Cross-border activities

- > Application of zero-rated VAT and tax exemption policies to cross-border taxable activities should be subject to relevant preconditions and detailed implementation rules.

Our Observation

It is good news to most enterprises for the complete VAT reform in China as the comprehensive turnover tax burden will be generally declined under VAT regime.

The company should analyze the VAT influence on all related business and separate the net price and VAT amount in the accounting system to have accurate accounting result. It is recommended to take the input VAT factor as a reference during making significant investment such as purchase real estate etc. The company should review the existed signed contract to clarify whether the VAT burden is already shifted. In order to obtain deductible input VAT, the company should require the suppliers to issue special VAT invoice as much as possible, which includes the invoice for hotel expense for the employee's business trip etc.

同时，对于不能抵扣的进项税（如贷款利息及相关费用、旅客运输服务等）要严格按照规定不予抵扣，避免因错误抵扣带来的税务风险。代表处同样适用营改增政策，由营业税改征增值税，其计算方法也相应进行了更新。因新政策刚刚实施，预期会有多轮修订，企业需要及时关注并确保及时做出相应的更新。

The company should pay attention to the regulation on un-credited input VAT for some expenses such as loan interest, traveler transportation etc. to avoid any tax risk derived from wrongly deduct the input VAT. The VAT reform policy is also applied to Rep-office, who should pay VAT instead of Business Tax since May 1, 2016 by the new calculation method stipulated by the regulation. The company should make sufficient preparation for any special questions derived from the new regulation and keep high attention on the updated policies as well as making corresponding response in a timely manner.

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关注跨境电子商务零售 (B2C) 新模式

Dr. Yanlin Xiang, Rödl & Partner 德国斯图加特

中国是自 2013 年以来全世界最大的货物贸易国，也是当前世界上最大的电商交易市场。在国家鼓励性政策的推动下，电子商务贸易额每年都在飞速增长。2015 年，中国的电商零售营业额达到了 9,450 亿美元，专家预测到今年年底可能超过 10,000 亿美元。

长久以来，货物进口到中国需要经历一个冗长复杂的清关程序，其成本不菲，且在外汇付出上尚有诸多限制，令众多中小企业望而却步。新的跨境电子商务模式试图改变这一情况：

自 2012 年起，跨境电子商务平台模式首先在 7 个试点城市开始实施，其中包括上海和广州。2014 年，海关总局发布一系列实施规则，跨境电子商务

Focus on Cross-Border B2C E-Commerce

Dr. Yanlin Xiang, Rödl & Partner Stuttgart, Germany

In the People's Republic of China, which has been the largest trading nation since 2013 and now has also become the biggest online market worldwide, e-commerce records impressive growth every year, which is the result of the state subvention policies. In 2015, e-commerce retail sales was USD 945 billion and experts expect sales of more than USD 1,000 billion by the end of this year.

So far, the import of goods into China has always involved a lot of bureaucracy, lengthy and complex customs procedures, and multiple restrictions on foreign exchange; these circumstances scared off many small enterprises. The new business model for cross-border e-commerce ("cross-border B2C e-commerce") is expected to change this situation:

In 2012, the pilot project was initially introduced in 7 cities, including Shanghai and Hangzhou. Ever since the B2C business model was implemented by the Central Customs Authorities in 2014, it has proven to

(B2C)平台模式逐步得以完善并不断扩张，2016 年初又新加入 3 个试点城市。至此，提供跨境电子商务平台服务的试点城市达到了 10 个。

阅读全文，请参见：

[关注跨境电子商务零售 \(B2C\) 新模式](#)

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be an established tool and become more widespread. At the beginning of 2016, the pilot project was launched in a further three cities. Thus, the number of pilot project cities authorised to sell cross-border e-commerce services has increased to 10.

If you want to read more about it, please follow the link:

[FOCUS ON CROSS-BORDER B2C E-COMMERCE](#)

最近出台重要税务法规回顾

“营改增”跨境增值税免税新公告

日前，国税总局公布 2016 年第 29 号公告，在免税跨境行为类别中增加了新纳入试点项目，明确了应税行为享受跨境免税政策的内涵和口径，并规范了跨境应税行为免税流程及税企的责任。该公告将于 2016 年 5 月 1 日施行。

跨境电子商务零售进口商品正面清单公布

日前，相关部门发布了两批跨境电子商务零售进口商品正面清单，只有清单内所列的商品才能通过跨境电子商务进口。清单涵盖了跨境贸易电子商务试点期间实际进口的绝大部分商品，主要是能以快件方式进境的生活消费品。清单自 2016 年 4 月 16 日实施。

Recent Important Tax Regulation Highlight

New measures for VAT exemption on cross-border activities under VAT reform

The SAT has recently issued the Public Notice [2016] No.29 to include new pilot items in the cross-border activities which are exempted from VAT, to clarify the content of activities which could be entitled to tax exemption, and to standardize the procedures for application of cross-border tax exemption. The new measures take into effect on May 1, 2016.

China released the positive lists of imported commodities for cross-border e-commerce retail

Recently, relevant Chinese authorities released two positive lists for cross-border e-commerce imports. Only goods listed in the "Positive List" will be allowed under cross-border E-commerce. The lists cover majority of actual imported commodities during the pilot period of cross-border e-commerce, and thereof mainly are the consumer goods that can be imported via express delivery. Lists come into effect on April 16, 2016.

《税务稽查案源管理办法》发布

国家税务总局发文（“税总发[2016]年 71 号”）明确关于高风险纳税人税务稽查办法以及对于偷税逃税的税务稽查案源管理。公告将于 2016 年 7 月 1 日起实施，相关税务机关需分析资料以辨别税收风险，从而决定税案的处理办法，并将其结果呈递至稽查负责单位。

“Administrative Measures for Tax Inspection Case Sources” is published

With a circular of the SAT (Shui Zong Fa [2016] No.71), the rules on tax inspection of high-risk taxpayers and the administration of cases subject to tax inspection on tax fraud and tax evasion are clarified. The Circular will be applied from July 1, 2016. The relevant tax authority is required to analyze the data and identify tax risks to determine processing method of a case. The findings will be submitted to the department who is in charge of the tax inspection.

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Broadening horizons

„We must be continuously on alert for new developments to be able to master challenges in the best possible way. With curiosity and an innovative approach, we are creating forward-looking solutions.“

Rödl & Partner

„The building of human towers requires each team member to again and again attempt something new. In this way, we are able to rise above the challenge together.“

Castellers de Barcelona



„Each and every person counts“ – to the Castellers and to us.

Human towers symbolise in a unique way the Rödl & Partner corporate culture. They personify our philosophy of solidarity, balance, courage and team spirit. They stand for the growth that is based on own resources, the growth which has made Rödl & Partner the company we are today. „Força, Equilibri, Valor i Seny“ (strength, equilibrium, valour and common sense) is the Catalan motto of all Castellers, describing their fundamental values very accurately. It is to our liking and also reflects our mentality. Therefore Rödl & Partner embarked on a collaborative journey with the representatives of this long-standing tradition of human towers – Castellers de Barcelona – in May 2011. The association from Barcelona stands, among many other things, for this intangible cultural heritage.

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