China Insight – Chinese Tax Regulation Update

Dear Sir or Madam,

Please find enclosed our update on the latest developments on Chinese Tax Law.

Kind regards,
CMS, China

Circular Number	Issuance Date	Effective Date	Topic	What is new?
SAT Announcement [2021] No. 16	2021-06-21	2021-05-02	Effectiveness of the Sino-Spanish Double Taxation Treaty	The Announcement stipulates that the Sino-Spanish Double Taxation Treaty ("DTT") and the associated protocol signed on 28 November 2018 entered into force on 2 May 2021. The DTT and the associated protocol are applicable to, on the China side, the taxes which are not levied at source from 1 January 2022 and other taxes levied on and after 2 May 2021. The key points that are worth attention of the DTT and the associated protocol mainly include the following: • The time threshold for assessment of a construction permanent establishment ("PE") is "more than 12 months". The time threshold for assessment of a service PE is "more than 183 days consecutively or aggregately during any consecutive 12-month period". • The dividend withholding tax ("WHT") rate shall not exceed 5% in the event that the shareholder company (not a partnership) is the beneficial owner of the dividend and directly holds at least 25% equity interest in the invested company at any time within 365 days before the date of dividend distribution. • The interest WHT rate shall not exceed 10% which is the same as provided by the PRC domestic law. WHT exemption is granted to the cases where the interest is paid to parties or financial institutions with governmental background of the other contracting state. • The royalty WHT rate shall not exceed 10%

				which is the same as provided by the PRC domestic law. • Capital gains from share transfer can be exempt from WHT if no more than 50% of the value of the shares for transfer comes from the immovable properties located in the other contracting state and the investor holds directly or indirectly less than 25% equity interest in the invested company at any time within 365 days before the share transfer. • As one of the key conditions for an individual who is a tax resident of a contracting state and carries out employment activities in the other contracting state to enjoy tax exemption in the other contracting state for his / her employment incomes, he / she must stay in the other contracting state for no more than 183 days during any consecutive 12-month period.
SAT Announcement [2021] No. 17	2021-06-22	2021-01-01	Miscellaneous Corporate Income Tax policies	The Announcement clarifies several specific Corporate Income Tax ("CIT") policies. The key points that are worth attention of this Announcement mainly include the following: • The freight, insurance expenses, labor and other related expenditures incurred by enterprises in the process of donating non-monetary assets shall be treated as welfare donation costs which are subject to pre-CIT deduction limit if these costs are included in the amounts of the qualified public welfare donation receipts. If the above costs are not included, they can be deducted as normal expenses from the enterprise's taxable income for CIT purposes. • The interest income obtained by the buyer of convertible bonds at the agreed interest rate during the holding period shall be included in the buyer's taxable income for CIT purposes. If the accrued interest is converted into stocks together with the convertible bonds, the accrued interest shall also be treated as the bonds buyer's taxable income for CIT purposes even if no income is recognized from accounting perspectives. After the conversion, the accrued interest will also constitute part of the buyer's investment cost in the converted stocks. • Correspondingly, interest of convertible bonds paid by the issuer can be deducted from the issuer's taxable income for CIT purposes. If the accrued interest is converted to stocks together with the convertible bonds, the accrued interest can also be deducted from the issuer's taxable income for CIT purposes even if the accrued interest is not actually paid at conversion. • If a foreign investor makes hybrid investment (which contains both debt investment and equity investment natures) in China and satisfies the conditions stipulated in Article 1 of SAT Announcement [2013] No. 41 ("Announcement 41"), the foreign investor shall

				recognize the interest income for income tax purposes and the invested company can deduct the interest expense from taxable income for CIT purposes as stipulated in Article 2 (1) of Announcement 41. However, if the foreign investor and the invested company in China are related parties and the investment income derived by the foreign investor is treated as equity investment income which is not subject to income tax in the foreign investor's jurisdiction, the interest paid by the invested company in China shall be treated as dividend distribution which cannot be deducted from the invested company's taxable income for CIT purposes. • After a company's taxation method is changed from deemed profit method into actual profit method, it can recognize the tax basis of the assets based on the invoices obtained for acquiring the relevant assets. If the invoices are not available, the amount recorded in the contract (agreement), certificate of the cash payment and accounting records can be treated as the tax basis. • After the change of taxation method from deemed profit method into actual profit method, the assets can be depreciated or amortized for CIT purposes during the remaining period which is the difference between the number of depreciation and amortization years stipulated in the tax law and the number of years for which the assets have already been used. • Artifact and artwork purchased for the purposes of collection, display, value preservation and appreciation shall not be depreciated or amortized for CIT purposes during the holding period. • Where an enterprise sells goods or provides services, etc. at market prices and is paid with full or partial considerations by the finance authorities according to a certain percentage of the quantity and amount of goods sold or services provided by the enterprise, the revenue shall be recognized on an accrual basis for CIT purposes. Other financial incentives granted by the government authorities shall be recognized as taxable income in a one-off manner for CIT purposes when the incentive amounts are received.
Announcement [2021] No. 21 jointly released by the MOF and the SAT	2021-05-31	2021-01-01	Extension of Land Appreciation Tax policies for corporate restructuring and reorganization	The Announcement has extended the LAT policies for corporate restructuring and reorganization stipulated in the circular Caishui [2018] No. 57. In particular, transfer of immovable properties for equity investment is not subject to LAT unless either the investor or the invested company is a real estate developer.

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