Rödl & Partner

NEWSLETTER CHINA

BROADENING HORIZONS

Issue: February 2020

Latest news on law, tax and business in China

www.roedl.de/china | www.roedl.com/china

Rödl & Partner

NEWSLETTER CHINA

BROADENING HORIZONS

Issue: February 2020

Read in this issue:

→ Tax Benefits

Bureaucracy Reduction versus Tax Expertise

Recently the Chinese tax authority published SAT Public Notice [2019] No. 35 ("the Notice"), which released new measures for non-resident taxpayers to enjoy treaty benefits in China. The new measures came into force with 1 January 2020.

The points that are worth most attention are specified as follows:

DEFINITION "NON-RESIDENT TAXPAYERS"

It should be noticed that the definition of "non-resident taxpayers" in the Notice is different from those defined by Chinese corporate income tax law ("CIT Law") and individual income tax law ("IIT Law"). The Notice follows the definition of applicable tax treaties, i.e. non-resident taxpayers in the Notice are defined as resident taxpayers of the other contracting state of the applicable tax treaty.

With such a definition, the following two groups of taxpayers could fall into the scope of "non-resident taxpayers" in the Notice:

- Non-resident taxpayers according to CIT Law or IIT Law, who are defined as resident taxpayers by the domestic laws of the other contracting state;
- Resident taxpayers according to CIT Law or IIT Law, who are defined as resident taxpayers by the domestic laws of the other contracting state at the same time, while according to the applicable tax treaty, should be defined as resident taxpayers of the other contracting state only.

For corporate taxpayers, the tax residency belongs to the state where the place of effective management is situated.

While for individual taxpayers, the tax residency would be subject to detailed analysis if the individual is defined as resident taxpayer in both contracting states.

SIMPLIFIED REPORTING REQUIREMENTS

Comparing to the measures till to the end of year 2019, the most eye-catching change in the measures effective from 1 January 2020 is the simplified reporting procedures for applying treaty benefits. Thus, instead of an extensive package of various documents, reports and information of the non-resident taxpayer, only a one-page form is required for reporting. The taxpayer can make self-assessment on their eligibility of the treaty benefits, utilize the benefits in the tax calculation by themselves, report the utilization of treaty benefits to the tax authority by submitting a one-page form, and retain the supporting documents for future inspection by tax authorities.

The reporting requirements are significantly simplified in the new measures, which would provide much more flexibility in tax compliance and practice to taxpayers.

RESPONSIBILITY OF APPLYING TREATY BENEFITS

The new measures have clarified the responsibilities of withholding agents and taxpayers for applying treaty benefits. It is the taxpayers who should take the responsibility for applying treaty benefits.

If the tax should be paid on a withholding basis, taxpayers should be aware of their eligibility for the treaty benefits, hand over the completed information reporting form to the withholding agents, and request them to apply treaty benefits to their income when withholding the relevant income tax. Meanwhile, withholding agents would have the obligation for providing supporting documents upon tax authorities' request in future tax inspection. Therefore, it is recommended that withholding agents should retain a copy of the supporting documents as well if they have applied any treaty benefits on behalf of the taxpayers.

The withholding agents have no obligation of applying treaty benefits to the income taxation if not requested by the taxpayers.

OUR VIEW

The Chinese tax authority seems to have loosened the upfront administration and supervision on treaty benefits application, nevertheless might invest more efforts in afterwards inspection on the eligibility of the application. Furthermore, even if the taxpayers are eligible for applying the treaty benefits, their prepared supporting documents may not be sufficient from the tax authorities' point of view, and that could not be realized until a tax inspection actually arrives. To certain extent,

the new measures actually demand more professional knowledge from both taxpayers and withholding agents concerned, in order to fully meet the compliance requirements. So involving professional assistances at an earlier stage is recommended for tax risk controlling in this regard.

CONTACT

Monica Chen
Tax Advisor (China)
+86 21 6163 5297
monica.chen@roedl.com

→ Individual Income Tax

Guideline for Annual Tax Declaration

On 31 December 2019, the SAT published the final guideline for the first annual IIT reconciliation in China since the revolution of Chinese IIT Law in 2019. The first annual IIT reconciliation will take place from 1 March to 30 June 2020.

Annual IIT reconciliation is a tax settlement for an individual's annual income, taking the IIT withheld by each withholding agent when paying the relevant income into consideration.

The following resident taxpayers are obliged to perform an annual IIT reconciliation:

- Who receives comprehensive income, i.e., wages and salaries, labor service income, author's remuneration and royalty income, from two or more sources, and the annual comprehensive income after the deduction of social security contributions exceeds RMB 60,000;
- Who receives labor service income, author's remuneration and/or royalty income and the annual comprehensive income after the deduction of social security contributions exceeds RMB 60,000;
- Who has IIT to be further paid or needs to claim for IIT refund.

Under the prevailing withholding IIT calculation methods, it could happen that each withholding agent of each category of individual income has withheld IIT in accordance with the relevant tax regulation, and there still exists further IIT liability to be settled when the individual combines all the income together and tax it on an annual basis, which is basically resulted from the annual progressive tax brackets. On the other side, tax overpayment is also possible if the RMB 60,000 annual tax threshold is not fully utilized when IIT is withheld.

In order to lighten the compliance workload for both tax authorities and taxpayers, as a temporary preferential policy, the following groups of individuals can be exempted from performing the annual IIT reconciliation for the years 2019 and 2020 in China:

- Individual whose annual comprehensive income is no more than RMB 120,000 and has IIT to be further paid, while the withholding agents of the comprehensive income has withheld IIT according to the relevant tax regulations;
- Individual who has IIT of no more than RMB 400 to be further paid and the withholding agents of the comprehensive income has withheld IIT according to the relevant tax regulations.

For individual who needs to claim IIT refund through the annual reconciliation, as expected, it is required that they should hold a bank account within Chinese territory to facilitate a direct remittance of the refunded tax from the national treasury system. Therefore it remains to be a question how foreign individuals who came to China on a travelling basis without holding a resident permit can proceed IIT refund application via the annual reconciliation, in view that foreign individuals without resident permits are generally not able to open a bank account in China.

The guideline has suggested that taxpayers can authorize their withholding agents or tax agents in China to perform the annual reconciliation for them on behalf.

Especially withholding agents will be obliged to do that if requested by taxpayers. Therefore it is to be discussed with the local tax authority on practical perspective whether the bank ac-

counts of the withholding agents or tax agents involved can be utilized for tax refund purpose, upon authorization by the above-mentioned foreign individuals, who are not able to open a bank account in China.

It is noticed that the guideline is particularly published for the annual IIT reconciliation for year 2019 in China. It is expected that practical problems may come up during the progress of the first reconciliation and the Chinese tax authority may modify the guideline upon feedback from taxpayers in the future.

CONTACT

Monica Chen
Tax Advisor (China)
+86 21 6163 5297
monica.chen@roedl.com

→ Customs

Impunity for Disclosure of Customs Tax Violations

In recent years, in order to improve the business environment, the Chinese Customs has introduced an proactive disclosure regulation in the "Regulations of the People's Republic of China on Customs Inspection" to encourage enterprises to abide by the law and to promote effective customs supervision. However, in the process of proactive disclosure, the specific standards of non-penalty under proactive disclosure are unclear, making it impossible for enterprises to reasonably predict the results of proactive disclosure. Due to the unpredictable results, enterprises rarely use the opportunity for proactive disclosure.

Recently, the General Administration of Customs issued the Public Notice 161 on Handling Proactive Disclosure of Tax-Related Violations ("the Notice"). The specific criteria for exemption from administrative penalties are as follows:

ADMINISTRATIVE PENALTIES - CRITERIA FOR EXEMPTION

The timing of disclosure is a crucial factor in ensuring impunity, which is categorized in the Notice as follows:

1. The enterprises proactively disclose to the Customs within three months from the date of the tax-related violations and actively eliminate the harmful consequences;
2. The enterprises disclose to the Customs initiatively three months after the date of the tax-related violation, and the amount of underpaid tax accounts for less than 10 per cent of the tax payable or the amount of underpaid tax is less than RMB 500,000. And the enterprises eliminate the harmful consequences actively.

It means, for cases that are actively disclosed within three months, there is no set criteria for the amount of underpaid taxes and the proportion of tax payable; and for cases disclosed after three months, the criteria for exemption from administrative penalty are stricter.

At the same time, no matter what the disclosure timing is, enterprises need to take "proactive elimination of harmful consequences" to avoid administrative penalties. "Proactive elimination of harmful consequences" include paying overdue taxes and submitting customs formalities, etc..

In addition, the Notice highlights again that if a proactively disclosing enterprise is punished by the Customs with warning or an administrative penalty of less than RMB 500,000, its enterprise credit rating by the Customs will not be affected.

EXCEPTIONAL RULES ON THE DISCLOSURE OF TAX VIOLATIONS

It should be noted that the above-mentioned exemption from administrative penalties applies only to the proactive disclosure of tax-related violations that affect tax collection.

The following cases do not fall into the scope of proactive disclosure:

1. Before the disclosure, the Customs already have clues to violations;
2. Before the disclosure, the Customs has notified the enterprise to accept the inspection;

3. The disclosure is grossly inaccurate or there are concealment of other illegal actions;
4. Violations are smuggling actions or crimes.

OUR INSIGHT

Prior to announcement of the Notice, although the principle of active disclosure was stipulated in the relevant customs regulations, the lack of specific processing standards led to different enforcement standards in various authorities. The Notice provides administrative authorities with legal basis in the execution, and with the definition of the facts it also shows enterprises how to act in such cases. At the same time, the Notice further reflects the policy trend of the Chinese Customs to guide and encourage enterprises to improve compliance initiatives.

In this context, it is suggested that multinational corporations should pay close attention to relevant customs risks and establish effective monitoring mechanisms. As a result, related risks can be detected as early as possible in order to take timely remedial measures such as active disclosure.

CONTACT

Kai Kang
Chinese CPA | Tax Advisor (China)
+86 21 6163 5356
kai.kang@roedl.com

→ Value Added Tax

China's Value-Added Tax Law - Important Changes of the Latest Draft

In the broad context of the National Tax System Reform, the future development and changes of the Value-Added Tax (VAT) legislation in the People's Republic of China are worthy of attention. The draft seeking public comments on the VAT Law of the People's Republic of China ("the Draft") sticks to the direction of the National Tax System Reform, and is also in line with the development trend of concise tax rates, making itself more friendly to taxpayers. Nevertheless, it remains to be seen what concrete changes will be confirmed in the final version of the VAT Law.

TAXABLE TRANSACTIONS

The Draft further integrates the scope of VAT taxable transactions. The original segregation of processing, repairing and replacement services has been abolished and such services have been incorporated under the "service" item. Whereas sales of financial products are singled out. The scope of taxable transactions is more clearly classified based on the respective characteristics of each taxable transaction. Also, the Draft has clearly defined non-taxable transactions, and further clarified the scope of non-taxable transactions.

THRESHOLD OF VAT

In the Draft, the threshold of VAT depends on the sales of taxpayers, which is set uniformly at the amount of RMB 300,000 for quarterly sales. Those who have not reached the threshold are not VAT taxpayers. Whereas units and individuals who have not reached the threshold can still choose to pay VAT voluntarily.

TAX RETAINED AT THE PERIOD-END

The system of tax retained at the end of the period has been formally written in the Draft. In 2019, the Ministry of Finance and the State Taxation Administration jointly issued an announcement on the tax retained policy, which stipulates that taxpayers of advanced manufacturing industries that meet certain conditions can apply with the tax authorities for refunding incremental tax credits.

For enterprises, if it is confirmed by law in the future, this system will help to alleviate their capital pressure and help to expand their scales of business. However, whether this system can be confirmed in the VAT law in the future and how to

implement still depends on specific implementation measures to be issued by related financial and tax authorities.

COUNTERING TAX AVOIDANCE

According to Article 18 of the Draft, where the sales of VAT taxpayers are unreasonable, significantly lower or higher, and without reasonable commercial purposes, the tax authorities are authorized to verify the sales by reasonable means. Consequently the tax authorities' intervention can not only be triggered if turnover is lower than normal, but also in the absence of a normal business purpose or if turnover is significantly higher than normal.

TAXATION METHOD

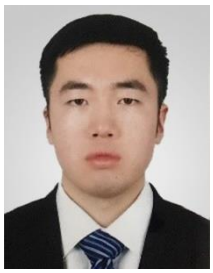
According to Article 25 of the Draft, where taxpayers are entitled to choose the simplified taxation method in accordance with the State Council's regulations, the taxation method shall not be changed within 36 months once being chosen. Therefore, it is advised that upon the time of its establishment, a new enterprise should opt for an appropriate taxation method based on a reasonable predication of the scales of market and sales.

FUTURE DEVELOPMENT

Generally speaking, compared with the preceding interim regulations concerning VAT, the Draft is moving towards concreteness and unification, and is becoming more friendly to taxpayers. However, the Draft still needs to be improved in a number of aspects, such as the interpretation of certain expressions and the improvement of related supporting systems. It remains to be seen what specific changes the final and officially released VAT law will bring in the future.

CONTACT

Kathy Chen
+86 10 8573 1300
kathy.chen@roedl.com



Yuchen Zhou
+86 10 8573 1300
yuchen.zhou@roedl.com

→ Foreign Investment

The Chinese Foreign Investment Law Comes into Force

The Regulation on the Implementation of the Foreign Investment Law (the "Implementation Regulation"), drafted by the Ministry of Justice of the People's Republic of China and the Ministry of Commerce along with the Development and Reform Commission, came into force on 1 January 2020. The Implementation Regulation is the supporting administrative regulation of the Foreign Investment Law of the People's Republic of China (the "Foreign Investment Law"), which details the specific measures of the Foreign Investment Law, aiming at continuously optimizing the investment environment and further protecting the legitimate rights and interests of foreign-invested enterprises.

1. FOREIGN INVESTMENT ENTITY

The Implementation Regulation clearly defines the concept of foreign investment in the Foreign Investment Law. As stipulated in the Foreign Investment Law, foreign investment includes the establishment of foreign-invested enterprises in China by foreign investors alone or jointly with other investors; also includes foreign investors investing in new projects in China alone or jointly with other investors. However, the term of "other investors" is controversial. In order to address this issue, the Implementation Regulation explicitly includes Chi-

nese natural persons as "other investors". Therefore, foreign investors shall have the right to set up foreign-invested enterprises or invest in new projects independently or jointly with Chinese natural persons, and such foreign investment shall be protected by the Foreign Investment Law and the Implementation Regulation.

2. ESTABLISHMENT OF FOREIGN-INVESTED ENTERPRISE

The approval and filing system for the establishment of foreign-invested enterprises is one of the foreign investment management systems that were established in the Law of the People's Republic of China on Sino-foreign Equity Joint Ventures, the Law of the People's Republic of China on Sino-foreign Co-operative Enterprises and the Law of the People's Republic of China on Wholly Foreign-owned Enterprises and its supporting administrative regulations. When the Foreign Investment Law and the Implementation Regulation came into force on 1 January 2020, the above three laws and their implementation rules as well as the Provisional Regulation on the Duration of Sino-foreign Equity Joint Venture Enterprises were invalidated at the same time, thus the approval and filing system for the establishment of foreign-invested enterprises would no longer be in use. The move will effectively implement the pre-establishment national treatment and negative list management system established by the Foreign Investment Law, further simplify the procedures for setting up foreign-invested enterprises, and create a more convenient environment for foreign investment.

The newly effective Implementation Regulation specifies the implementation mechanism of the negative list for foreign investment. Foreign investors cannot make investment in industries where investment is prohibited by the negative list. Where foreign investment is restricted in the negative list, foreign investors must meet the equity requirements, senior management requirements and other restricted access requirements specified in the negative list. The negative list will be adjusted in due course in light of the country's further opening-up and economic development needs. According to the current form of economic policy, it is conceivable that the negative list will be further compressed.

3. STANDARDIZE THE ADMINISTRATION OF FOREIGN INVESTMENT

In accordance with the provisions of the Foreign Investment Law on encouraging and guiding foreign investors to invest in specific fields, the Implementation Regulation further illustrates specific incentive measures. According to the Industry Guidelines on Encouraged Foreign Investment, foreign investors are entitled to preferential treatment in public finance, taxation, finance and land use if they make investment in relevant encouraged industry. Moreover, the Implementation Regulation further clarifies that foreign investors are entitled to enjoy corresponding preferential policies for reinvestment (i.e. to expand their investment in China with their investment income in China).

In view of the foreign-invested enterprise information reporting system established in the Foreign Investment Law, the Implementation Regulation has clarified the details for implementation of the system. Foreign-invested enterprise shall submit relevant investment information through the company registration system and the national enterprise credit information publicity system in accordance with the content, scope, frequency and process required by the Commission of Commerce and the State Administration for Market Regulation. At the same time, the department of commerce and relevant authorities shall strengthen information sharing. The information that can be obtained through departmental information sharing shall not be demanded from the foreign investors or foreign-invested enterprises. This measure will greatly reduce the burden on foreign-invested enterprises.

In order to implement the foreign-invested enterprise information reporting system, the Ministry of Commerce and the State Administration for Market Regulation promulgated the Measures on Foreign-invested Enterprise Information Reporting on 30 December 2019 (the "Measures"). The Measures came into effect on 1 January 2020. The Measures stipulate that foreign investors or foreign-invested enterprises shall provide investment information by submitting initial reports, alteration reports, liquidation reports and annual reports in accordance with the Measures. When establishing a foreign-invested enterprise in China, a foreign investor shall submit an initial report through the enterprise registration system at the time of registration. The initial report shall include the basic information of the enterprise, the information of investors and its actual controllers, the information of investment transactions and other information. If the information contained in the initial report is changed and the change involves registration (filing), the foreign-invested enterprise shall submit the change report through the enterprise registration system when handling the registration (filing) for change. The market supervision department shall forward the initial report or change report submitted by foreign investors and foreign-invested enterprises to the competent commercial authority timely.

4. EQUAL TREATMENT FOR DOMESTIC AND FOREIGN ENTERPRISES

Based on the provisions of the Foreign Investment Law requiring the government to treat all domestic and foreign-invested enterprises as equals, the Implementation Regulation emphasizes that the preferential policies such as state-owned capital arrangement, land supply, tax deductions, qualifications, standard formulation and human resources, etc. shall apply to the foreign-invested enterprises equally.

Especially in the government procurement, given that Foreign Investment Law guarantees the right of foreign-invested enterprises to fairly participate in government procurement activities, the Implementation Regulation explicitly addresses that the government and relevant authorities shall not obstruct or restrict the free access of foreign-invested enterprises to government procurement markets in their respective regions and industries.

In terms of the requirements of the Foreign Investment Law that domestic and foreign-invested enterprises should equally participate in the formulation of the standards, the Implementation Regulation further specifies that the wholly foreign-owned enterprise shall have the equal right to formulate "national standards, industry standards, local standards and corporate standards" in accordance with the laws, and can put forward the project proposal and undertake the drafting work.

5. CAPITAL OPERATION

The Foreign Investment Law stipulates that foreign-invested enterprises have the right to raise funds by issuing stocks, corporate bonds and other means according to law. The Implementation Regulation defines the above-mentioned "other means", which refers to the financing of foreign-invested enterprises by means of public or non-public issuance of other financing instruments or borrowing foreign debts. This clarification broadens the financing channels of foreign-invested enterprises and helps solve the problems of capital operation of foreign investors. At the same time, based on the provisions in the Foreign Investment Law that foreign investors can freely import and export funds in RMB or foreign currencies in accordance with the laws, the Implementation Regulation provides a further explanation: the currency, amount and frequency of foreign exchange of foreign investors shall not be illegally restricted; the lawful income of foreign workers may also be remitted freely. That is, the Implementation Regulation further guarantees that foreign investors and enterprises with foreign investment is entitled to free exchange in accordance with the laws.

6. PROTECTION OF INTELLECTUAL PROPERTY

The provisions on intellectual property protection in the Foreign Investment Law reflect the trend of comprehensively improving the standards of intellectual property protection in China. The Implementation Regulation strengthens the protection of technology and trade secrets owned by foreign investors and foreign-invested enterprises. On the basis of the requirement stipulated in the Foreign Investment Law that no administrative means shall be used to compel the transfer of technology, the Implementation Regulation specifies that administrative authorities and personnel shall not use administrative licensing, administrative inspection, administrative penalty, administrative coercion, etc. to force technology transfer or force in a disguised form. At the same time, in view of the principle of protecting commercial secrets of foreign-invested enterprises stipulated in the Foreign Investment Law, the Implementation Regulation further points out that non-performing personnel shall not have access to materials involving commercial secrets; if it is necessary to share the materials with other departments, the commercial secrets contained in the materials shall be treated confidentially.

7. PROTECTION OF FOREIGN INVESTMENT

The Implementation Regulation strengthens the investment protection measures stipulated in the Foreign Investment Law in the aspects concerned by foreign investors. The Foreign Investment Law points out clearly that the government shall not expropriate the investment of foreign investor. This principle is embodied in the Implementation Regulation, which stipulates that if the government expropriates the investment of foreign investors under special circumstances for the public interest, the expropriation shall be conducted in a non-discriminatory manner in accordance with legal procedures and compensation shall be made according to the market value. The Foreign Investment Law stipulates that governments and departments at all levels shall fulfill the policy commitments and contracts made to foreign investors and foreign-invested enterprises. The Implementation Regulation further refines the provisions, pointing out that governments at all levels should honor their commitments and perform contracts, and should not break the contract on the grounds of administrative district adjustment, change of officials, institution or function adjustment. If the relevant authorities and personnel fail to perform their commitments or contracts, they shall bear corresponding legal liabilities.

8. PROMOTING THE 5-YEAR TRANSITION PERIOD

The Foreign Investment Law, taking effect on 1 January 2020, abolishes the Law of the People's Republic of China on Sino-foreign Equity Joint Ventures, the Law of the People's Republic of China on Sino-foreign Co-operative Enterprises and the Law of the People's Republic of China on Wholly Foreign-owned Enterprises, and at the same time stipulates that foreign-invest enterprises established on the basis of the above three old laws, such as "organizational form" and "organizational structure", which are inconsistent with the provisions of the Company Law of the People's Republic of China and the Partnership Enterprise Law of the People's Republic of China can continue to retain the original enterprise organizational form of enterprises within the five-year transition period set up in the Foreign Investment Law. The Implementation Regulation has made further specific provisions on how to deal with such foreign-invested enterprises after the transition period: since 1 January 2025, for the existing foreign-invested enterprises that have not adjusted their organizational forms or organizational structures, etc. and have not gone through the change of registration in accordance with the laws, the registration authority will not deal with other registration matters of those foreign-invested enterprises and will publicize the relevant situations. This measure effectively motivates enterprises to cooperate with the implementation of the new law without imposing additional burdens on enterprises' normal operation. Once the organizational form and organizational structure are adjusted in accordance with the laws, the equity or equity transfer method, income distribution method and residual property distribution method, etc. that are agreed by the original parties to the joint venture or cooperation contract can still apply in accordance with the contract. Thus the implementation of the Foreign Investment Law and the Implementation Regulation will be smoothly and effectively conducted, while effectiveness of the contracts remain unaffected. However, it is worth noting that the Implementation Regulation does not address the legal consequences of the foreign-invested enterprises that fail to transit within 5 years. The effectiveness of the original joint venture agreement, articles of association and the board of directors' resolution in the original organizational form after the transition period remain to be further standardized and clarified by other legal documents and judicial practices.

9. INVESTMENT BY INVESTORS FROM HONG KONG, MACAO AND TAIWAN

In view of the fact that the Foreign Investment Law does not address the issue of investment in China by Hong Kong, Macao and Taiwan investors and Chinese citizens residing abroad, the Implementation Regulation clearly states that investment in the mainland by Hong Kong and Macao investors shall be governed by the Foreign Investment Law and the Implementation Regulation; Investment by Taiwan investors in the mainland shall be governed by the Law of the People's Republic of China on the Protection of Investment by Taiwanese Compatriots and its implementation rules. Chinese citizens residing abroad who invest in China shall be subject to the Foreign Investment Law and the Implementation Regulation.

CONTACT

Xiaomei Fu
Legal Counsel
+86 21 6163 5366
xiaomei.fu@roedl.com

→ Labor Law

Noteworthy Changes regarding the Employment Law in Times of the Corona-Virus in China

In order to prevent the spread of the new Corona-Virus, the State Council of the PRC (People's Republic of China) decided on the 27 January 2020 to extend the Chinese New Year holiday until 2 February 2020. The local government in Shanghai extended the holiday until the 9 February 2020. As a precaution measure by the government in Shanghai, enterprises have to remain closed during this time. This poses a substantial challenge for the affected enterprises. In what follows, we will provide an overview of the employment law measures and their effects.

DO ENTERPRISES HAVE TO REMAIN CLOSED DURING THE EXTENDED CHINESE NEW YEAR HOLIDAY?

According to the "Law on Prevention and Control of Infectious Diseases" and the "Emergency Handling Law" of the PRC, national and local governments are entitled to take such measures. Therefore, the affected enterprises have to follow the order and remain closed.

WHICH COMPANIES ARE AFFECTED?

It depends on the local measures taken. For example in Shanghai, most companies have to stay closed up until 9 February 2020. However, there are some exceptions:

- Industries which are directly connected to the daily life such as utility companies (water, gas, electricity, telecommunications, logistics, supermarkets, as well as companies that are supplying and providing groceries) are obliged to start business on the 3 February 2020.
- Companies in the supply chain for pharmaceuticals and products needed in the field of medicine such as protective masks, -clothes, -glasses etc.
- Companies which were active during the Chinese New Year.

All companies that are starting business before 10 February 2020 have the obligation to register at their local authority.

ARE WORKING DAYS ON THE WEEKEND INTENDED TO COMPENSATE FOR THE ADDITIONAL DAYS OFF? HOW IS WORK DURING THE EXTENDED CHINESE NEW YEAR HOLIDAY REGULATED?

No, it is not intended to compensate the extended holiday with work on the weekend.

Employees who are ordered to work during the extended holiday by their employer will receive equivalent days off as a substitute, or a 200 per cent payment (equal to the treatment for overtime hours on weekends).

CAN EMPLOYEES BE ORDERED TO WORK IN THE COMPANY OR TO DO HOME OFFICE DURING THIS TIME?

This question cannot be answered across-the-board. If the affected company is obliged to remain closed, the work of the employees will be treated equal to overtime hours on weekends. Hence, the employer could order Home Office under these circumstances.

In cities which are not obliged to follow these measures such as Beijing, employers can order their employees to do Home Office as an alternative to work at the company, without being required to pay equal to overtime hours. However it is uncertain, considering the employment protection laws, whether employers can obligate their employees to work at the company during the current situation. Companies are therefore recommended to only obligate workers in special cases (see above), and allow Home Office in all other cases.

CAN THE PAYMENT FOR OVERTIME HOURS BE REPLACED WITH COMPENSATORY TIME-OFF?

Yes, as already exemplified, employers can replace the claim of overtime hours with days off, instead of granting monetary compensation.

HOW ARE EMPLOYEES TREATED ACCORDING TO THE EMPLOYMENT LAW, THAT ARE UNDER QUARANTINE MEASURES OR HINDERED TO WORK BECAUSE OF LOCAL TRANSPORTATION OR TRAFFIC BARRIERS?

There are no uniform rules for this. Basically, employees should be paid as if they meet the requirements of their working duties in all of these cases. In other words, the stipulated salary continues to be paid. In addition, employers are not allowed to terminate the employment contract because of these reasons. However, depending on the location, employers have various options:

1. Ordering work through Home Office if possible, or
2. Ordering to take annual leave, or
3. Compensate through work on Saturdays when the quarantine period is over. If the duration of the quarantine period is relatively long however, then the specific case must be examined in more detail.

CONTACT

Xiaomei Fu
Legal Counsel
+86 21 6163 5366
xiaomei.fu@roedl.com

→ Highlights

Recent Important Regulation Highlight

CHINA ISSUED NEW CONSUMPTION TAX LAW

On 3 December 2019, the Ministry of Finance (“MOF”) and the SAT jointly issued the "Consumption Tax Law (Draft for Comment)". The Draft for Comment includes nine aspects of consumption tax, i.e. taxpayers, taxable items and tax rates, calculation of the payable tax, taxable values, deduction regulations, tax reliefs, time of tax obligation, administration of tax levies, pilot reform on consumption tax.

SAT CANCELS THE TIME LIMIT FOR VERIFICATION AND CONFIRMATION OF VAT CREDIT VOUCHERS

For special VAT invoices, special customs certificates for import VAT payments, unified invoices for the sale of motor vehicles, electronic general VAT invoices for tolls issued on and after 1 January 2017 and received by the VAT general taxpayers, the time limit for verification and confirmation, check and comparison, and declaration for deductions, will be cancelled. The regulation comes into force on 1 March 2020.

FIFTH PROTOCOL TO MAINLAND-HONG KONG DOUBLE TAXATION AGREEMENT ENTERED INTO FORCE

The Fifth Protocol of the Double Taxation Agreement (DTA) between Mainland of China and the Hong Kong Special Administrative Region came into force on 6 December 2019. In Mainland China, it shall apply to the income derived in the taxable years beginning on or after 1 January 2020, and in the HKSAR, to income derived in the years of assessment beginning on or after 1 April 2020. The Fifth Protocol introduces some revisions in two aspects, including incorporating the results concerning Base Erosion and Profit Shifting (BEPS) and adding a new article in respect of "teachers and researchers".

E-REGISTRATION FOR OVERSEAS PAYMENTS

According to the latest news from the SAT, e-registration for overseas payments has been realized nationwide from 1 January 2020. The enterprises only need to log onto the e-tax system, select the “tax registration of overseas payments" module to fill in the payment registration information. The registered payment information can be verified

online at the bank terminal and therefore the enterprises do not need to submit the paper form to the bank as previously.

SHANGHAI/CHINA: 4 MEASURES FOR ENTERPRISES IN SHANGHAI DUE TO THE EPIDEMIC SITUATION

As the novel corona virus outbreak brought certain losses to the enterprises, on 3 February, the Shanghai government issued four measures to reduce the enterprises' burden:

1. In 2020, for enterprises that do not lay off employees, do not reduce the number of employees and meet certain requirements, 50 per cent of the total amount of unemployment insurance premiums actually paid by employers and employees in the previous year shall be returned.
2. Starting from 2020, the payment year of social security shall be adjusted to 1 July of the current year to 30 June of the following year, which is postponed for three months.
3. For enterprises that cannot pay social security timely due to the outbreak, no late fees will be charged.
4. Enterprises can receive 95 per cent subsidy according to the actual training cost for qualified vocational trainings during the outbreak period.

→ Save the Dates

5 MARCH 2020, NUREMBERG

IHK NUREMBERG

Social Credit System (in German language)

Speaker:
Dr. Martin Seybold, Rödl & Partner Beijing

26 MARCH 2020, COLOGNE

CHINA LOGISTICS

Acting with Legal Certainty - E-Commerce in China (in German language)

Speaker:
Sebastian Wiendieck, Rödl & Partner Shanghai

2 JULY 2020, NUREMBERG

RÖDL & PARTNER

Forum Global

Speakers:
various speakers from China Team

CONTACT FOR FURTHER INFORMATION

Beate Kürstner-Heß
T +49 711 7819 147 08
beate.kuerstner-hess@roedl.com

CONTACT FOR TAX IN CHINA

Vivian Yao
Partner
Tax Advisor (China)
+86 21 6163 5200
vivian.yao@roedl.com

CONTACT FOR LEGAL IN CHINA

Sebastian Wiendieck
Partner
Attorney-at-Law
+86 21 6163 5329
sebastian.wiendieck@roedl.com

Dr. Martin Seybold
Partner
Attorney-at-Law
+86 10 8573 1366
martin.seybold@roedl.com

CONTACT FOR BUSINESS PROCESS OUTSOURCING AND AUDIT IN CHINA

Qing Cheng
Partner
+86 21 6163 5266
qing.cheng@roedl.com

Roger Haynaly
Partner
German Public Auditor
+86 21 6163 5305
roger.haynaly@roedl.com

OUR CONTACT IN GERMANY

Dr. Thilo Ketterer
Partner
German Public Auditor
+49 911 9193 9003
thilo.ketterer@roedl.com

Mathias Müller
Partner
German Tax Advisor
+49 89 9287 8021 0
mathias.mueller@roedl.com

Jiawei Wang (Victor)
Partner
Legal Counsel
+49 711 7819 1443 2
jiawei.wang@roedl.com

Our Offices in China			
Shanghai Office 31/F LJZ Plaza 1600 Century Avenue Pudong District Shanghai shanghai@roedl.com T +86 21 6163 5200 F +86 21 6163 5310	Beijing Office Suite 2200 Sunflower Tower 37 Maizidian Street Chaoyang District, Beijing peking@roedl.com T +86 10 8573 1300 F +86 10 8573 1399	Guangzhou Office 45/F, Metro Plaza 183 Tian He North Road Guangzhou kanton@roedl.com T +86 20 2264 6388 F +86 20 2264 6390	Taicang Office 16/F Dong Ting Building Middle Zheng He Road 319 215400 Taicang taicang@roedl.com T +86 5125 3203 171

Imprint

Publisher
Rödl & Partner China
31/F LJZ Plaza
1600 Century Avenue
Pudong District, Shanghai
T +86 21 6163 5200
www.roedl.de
www.roedl.com

Responsible for the content
Vivian Yao
vivian.yao@roedl.com

Layout/Type
Elisa Guo