

Broadening horizons

China Newsletter

Latest News on law, tax and business in China

Issue: October 2016 · www.roedl.de/www.roedl.com

本期内容：

- > 后 BEPS 时代的中国回应
- > 双重雇佣安排的税收误区——中国诉讼第一案
- > 如何申请开具中国税收居民身份证明？
- > 外商直接投资领域自 2016 年 10 月开始全面改革
- > 最近出台的重要法规回顾

Read in this issue:

- > China's Responses to Post BEPS Era
- > Misunderstanding of Taxation on Dual Employment Arrangement in China – A Critical Example Illustrated by Court Verdict
- > How to Apply Certificate of Chinese Tax Resident?
- > Comprehensive Reform in the Area of Foreign Direct Investment Has Taken Effect from October 2016
- > Recent Important Regulation Highlight

后 BEPS 时代的中国回应

Frances Gu, Rödl & Partner 中国上海

中国 G20 峰会与多国关于 BEPS 讨论

G20 峰会于 2016 年 9 月 5 日成功在杭州闭幕。峰会期间，世界各国领导人就国际税制的发展（如：税基侵蚀与利润转移“BEPS”行动）进行了讨论，并发布了以此为议题的相关公告就各国目前情况及未来努力方向进行了总结。

自 2013 年 BEPS 行动伊始，中国就积极主动参与到此项目中。国税总局已参加经合组织举行的 86 次有关会议并在过程中提出了 1000 多项建议，其中的诸多建议被采用并包含在了 2015 年 9 月出版的 BEPS 最终成果中。随着最终成果的公布，国税总局也快速向经合组织作出回应，在通过研讨会介绍成果的同时，也在其官网上发布了最终成果的中文翻译版。

在中国实施行动

与此同时，中国也十分注重在国内转化 BEPS 成果并加速建立现代化国际税收规则和管理体系。近年来，中国发布了以下税收文件作为对 BEPS 行动的回应：

- > 一般反避税管理办法
- > 关于非居民企业间接转让财产企业所得税若干问题的公告
- > 非居民享受税收协定待遇管理办法
- > 关于企业向境外关联方支付费用有关企业所得税问题的公告
- > 国家税务总局关于完善关联申报和同期资料管理有关事项的公告

随着相关法规的颁布，中国近年来也在一直加强对转让定价和一般反避税的调查。国税总局也在不断健全其管理、调查、服务“三位一体”的反避税防控体系，逐渐将重点从事后调查转为事前监管，将纳税人

China's Responses to Post BEPS Era

Frances Gu, Rödl & Partner Shanghai, China

G20 Summit in China and multinational BEPS-Discussion

The G20 Summit has been successfully concluded on September 5, 2016 in Hangzhou. During the Summit, the world leaders have also discussed the development of the international tax regime (i.e. Base Erosion and Profit Shifting (“BEPS”) Actions) and have published a public notice on this topic summarizing the current status and future endeavors intended to be done by each country.

Since the start of BEPS Actions in FY2013, China has proactively participated in the project. The State Administration of Taxation (“SAT”) has attended 86 meetings held by OECD in this regard and proposed more than 1000 advices during the process, many of which has been incorporated into the final deliverables of the BEPS results published in September 2015. After the final deliverables is published, SAT has quickly responded to OECD by holding a seminar in introducing the results and also published the translated Chinese version of the final deliverables on its website.

Implementation of the measures in China

In the meantime, China has also highly valued the transformation of BEPS achievements at the domestic level and speeded up in its establishment of a modern international taxation ruling and administration system. China has issued the following tax regulations in response to BEPS actions in recent years:

- > General Anti-tax Avoidance Rulings
- > Public Bulletin regarding Indirect Transfer of Chinese Taxable Assets by Non-resident Enterprises
- > Treaty Benefit Application Administration Rules
- > Public Bulletin regarding Strengthened Administration on Outbound Payments between Related Parties
- > Public Bulletin regarding update of TP Reporting Requirements in China

With the issuance of the relevant regulations, China has also increased its TP and general anti-tax avoidance audits in recent years. SAT has further insisted its three-in-one anti-tax avoidance prevention system as “Administration, Service and Investigation”, and grad-

按风险等级进行划分以便更好管理。另外，针对境外投资企业，根据其行业、地区、财政年度和投资来源国，建立了利润水平监测体系。2015 年中国进行了 291 例转让定价调查，其中立案 198 例，查补税款 610 亿人民币。

回顾并展望中国的努力

此外，中国也在积极参与并加深与各国间的国际税收交流合作。中国已签署了《多边税收征管互助公约》及《税收事务金融账户信息自动交换国际准则》，将分别于 2017 年 1 月 1 日和 2018 年 9 月生效。中国成功举办了经合组织第十届税收征管论坛，并在中国建立了经合组织多边税务中心，以进行发展中国家间国际税收信息及知识交换。另外，中国也积极参与相互协商程序，截止 2016 年 8 月，已成功完成 191 项相互协商程序并协助多国消除双重征税总计金额超过 300 亿人民币。上述所有行动表明，中国就新国际税收体系下为全球共同打击避税及促进“一带一路”战略已做好充分准备。

ually has changed its focus from post investigation to pro supervisions by categorizing the taxpayers into different risk level for better management. It has established the profitability level monitoring system for foreign invested companies based on industry, region, fiscal year and investment source country. In FY2015, China has initiated a total of 291 formal TP audits and concluded 198 audits with levying a total additional tax liability of RMB 61 billion.

Looking back and forward to the China's endeavors

In addition, China has also proactively participated and promoted the cooperation of international taxation exchange between nations. China has signed the Multilateral Convention on Mutual Administration Assistance in Tax Matters as well as International Standard for Automatic Exchange of Financial Account Information in Tax Matters, which will become effective in January 1, 2017 and September, 2018 respectively. China has also successfully held the 10th Meeting of the OECD Forum on Tax Administration and established a multi-national OECD tax center in China in exchanging the information/knowledge regarding international taxation between developing countries. Furthermore, China has proactively participated in Mutual Agreement Procedures ("MAP") and has successfully concluded 191 MAPs until August, 2016 and assisted multi-nationals in eliminating double taxation of more than RMB 30 billion in total. All aforementioned actions have demonstrated that China has well prepared itself in the new international tax system for jointly combating tax avoidance on a worldwide basis as well as promoting its "One belt, One Road" strategy.

联系人 / Contact



Frances Gu

业务合伙人 / Associate Partner

中国注册会计师 / Chinese Certified Public Accountant

电话 / Tel.: + 86 (21) 61 63 – 52 38

邮箱 / E-Mail: frances.gu@roedl.pro

双重雇佣安排的税收误区——中国诉讼第一案

Monica Chen, Rödl & Partner 中国上海

拆分雇佣合同在中国引起双重雇佣安排

2015年年底，中国广州市中级人民法院就一起案件公布最终判决，这起案件是有关双重雇佣安排税务处理问题在中国的第一起判决案例。该案件中的英国公民（以下简称“纳税人”）通过与中国境内外关联公司分别签订单独的劳动合同而持有双重职位，类似的双重雇佣安排经常被用于外籍人员的个人所得税筹划中，尤其是跨国集团的高级管理人员。该案例反映出外籍人员对于双重雇佣安排的一些常见误区，因此引起了广泛关注。

中国居民纳税人及个人所得税法

一般来说，若外籍人员不是中国居民纳税人，那么他仅需就其来源于中国的收入在中国缴纳个人所得税。在上述案例中，纳税人声称，他与一家美国公司拥有独立的雇佣合同，并负责公司的海外项目管理，因此由美国公司支付其薪酬。对中国而言，美国支付的薪酬显然应当是“来源于境外的收入”，因此，中国税务机关无权对其征税。此处对“收入来源”的理解存在误区。事实上，在这一点上，中国国内个人所得税税法与税收双边协定的定义几乎一致：来源于中国的雇佣收入是指在中国受雇而获得的薪酬，无论它在何处支付。换句话说，“收入来源”取决于纳税人受雇时的实际工作地。

中国个人所得税税负

根据这一定义，同时作为一种获悉外籍人员整体收入水平的手段，中国个人所得税税法要求，外籍个人应首先全额申报中国支付和境外支付的全部薪酬，然后根据在中国实际停留时间按比例计算相应在中国应承担的个人所得税税负。尽管有这样的规定，很多外籍人员会将他们的雇佣合同和工资支付在中国和境外公

Misunderstanding of Taxation on Dual Employment Arrangement in China – A Critical Example Illustrated by Court Verdict

Monica Chen, Rödl & Partner Shanghai, China

Dual employment arrangement in China by separate employment contracts

At the end of 2015, Guangzhou Intermediate People's Court gave the final verdict on a case regarding the Chinese individual income tax ("IIT") treatment of a UK national ("the taxpayer") who holds dual position by arranging separate employment contracts with affiliated companies within and outside China, which was the first case from the Chinese court in this regard. This case has revealed some common misunderstandings for dual position arrangement, which is frequently used in IIT planning by expatriates, especially for senior executives of multinational companies and therefore caused wide attention.

Tax residence and IIT law in China

As commonly accepted, an expatriate who is not a tax resident of China is only obliged to pay Chinese IIT on his China sourced income. In the abovementioned case, the taxpayer claimed that he held an independent employment contract with a US company, and was responsible for the overseas projects management and hence got paid by the US company. The US paid salary was "foreign sourced income" and Chinese tax authority shall have no right to tax it. It was a misunderstanding about the source of income. Actually in this respect, Chinese national IIT Law has almost the same definition as DTA: China-sourced employment income means remuneration in respect of an employment exercised in China, regardless of where it is paid. In other words, source of income depends on the physical presence of the taxpayer when he works under the employment.

IIT liabilities in China

Following such definition and also as a means to get a full picture of expatriates' actual income level, it is required by the Chinese IIT Law that both the China-paid salary and the foreign-paid salary shall be fully declared first and then the IIT liability in China could be prorated based on the actual time spent in China. Despite of such a stipulation, many expatriates split

司之间进行拆分，以向中国税务机关隐瞒其境外部分收入，从而可以适用较低的个人所得税税率。事实上，如果外籍人员个人不主动进行申报，中国税务机关不通过国家间或各机构间（如税务机关、银行等）的信息交换是很难获得有关境外支付工资的信息的。然而，中国税务机关已有加强各种渠道的信息交换以及信息采集的趋势，因此，通过拆分合同和工资支付来“隐藏”收入将在未来变得十分困难。

在上述案例中，纳税人坚持认为，既然他在美国对其美国公司支付的工资全额缴纳了个人所得税，中国税务机关再次征税会引起双重征税，这违反了中美之间的双边税收协定。这是在外籍人士中另一个常见的误解。

其实，避免双重征税并不意味着只要在一国为某项收入缴纳了所得税款就自动无需在另一国交税。税收双边协定是通过规定两个国家对各项收入的征税权来避免双重征税的。当纳税人错误地在美国缴纳了其来源于中国收入的个人所得税，他应在美国申请税款退还，而非逃避中国税收。

中国个人所得税代扣代缴义务

此外，我们也可以从此案例中发现，中国税务机关就代扣代缴义务的理解给出了一些有意义的线索。在此案例中，税务机关要求中国企业首先补缴纳税人少交的税款。因为根据 1999 年发布的一篇税务规章，中国企业被认定为对境外关联公司支付的薪酬负有代扣代缴义务。此案中中国税务机关认为，虽然纳税人的工资全额或部分由境外企业进行支付，但中国企业有义务向税务机关报告雇员的全额工资并履行代扣代缴义务。我们的经验也证实了这一点。通常，中国税务机关会将目标锁定中国企业，以追缴外籍纳税人的未/少缴税款，同时，也将中国企业作为一条有效的渠道，来获取纳税人从境外关联企业获得的整体收入信息。

总结

这起案例重申了中国税务机关对双重雇佣安排的个人所得税征收管理的态度。此外，我们相信，中国税务机关通过加强信息收集交换，将发现越来越多的双重雇佣安排。因此，我们建议纳税人应审阅复核其双重

their employment contracts and payroll payments between Chinese and overseas group companies aiming to hide their foreign-paid income from Chinese tax authority and thus apply for a lower tax rate in China. Truly, without information exchange between countries or between different institutions such as tax authority and banks, it is almost impossible for Chinese tax authority to have access the foreign-paid salary if the expatriate does not report it on his own initiative. While it is a trend that Chinese tax authorities are strengthening information exchange as well as information collection from multiple channels. So "hiding" income by splitting contract and payroll payment would become difficult in the future.

In this case, the taxpayer insisted the view that since he had fully paid income tax in US on his US-paid salary, the Chinese tax authority caused double taxation by taxing it again in China, which violated the DTA between U.S. and China. It was another common misunderstanding among expatriates.

In fact, tax on certain income being paid in one country does not mean the income is automatically exempted from the taxation in another country. DTA avoids double taxation by clearly regulating the taxation rights of both countries. In this case, as the taxpayer improperly paid the tax on his China-sourced income in US, he should claim the US tax back instead of evading China tax.

IIT withholding obligation in China

Furthermore, we have seen some meaningful clues on the understanding of withholding obligation by the Chinese tax authority. In this case, the Chinese company has firstly made up the underpaid income tax of the taxpayer upon the tax authority's request as they were deemed as having the withholding obligations for the foreign-paid salary as well by referring to an old tax circular published in 1999. According to the tax authority, the Chinese entity should be responsible for reporting their employee's full salary and withholding IIT accordingly although the salary might be fully or partially paid by an affiliated company outside China. This is in line with our experience as well. It is usual that Chinese tax authority would target on the relevant Chinese entity for tracing the underpaid taxes of foreign individual taxpayers, and take the Chinese entity as an effective channel to obtain the taxpayers' full income information from their overseas affiliated company.

Conclusion

This case has reiterated Chinese tax authority's attitude towards IIT administration on dual employment arrangement. In addition, with the strengthening of information collection and exchange, it is believed that more and more dual employment arrangements will

雇佣安排下的纳税申报，以避免此案例中提到的潜在风险及造成双重征税的后果。

be spotted by the Chinese tax authority in the future. Therefore, it is recommended that taxpayers should review their current tax filing of the dual employment arrangement so as to avoid the potential penalties and double taxation as illustrated in the above case.

联系人 / Contact



Monica Chen

高级咨询师 / Senior Associate

电话 / Tel.: + 86 (21) 61 63 – 52 97

邮箱 / E-Mail: monica.chen@roedl.pro

如何申请开具中国税收居民身份证明？

How to Apply Certificate of Chinese Tax Resident?

Frances Gu, Rödl & Partner 中国上海

Frances Gu, Rödl & Partner Shanghai, China

在中国政府积极鼓励“走出去”和“一带一路”战略的支持下，中国国家税务总局于 2016 年 6 月 28 日发布了关于开具《中国税收居民身份证明》有关事项的公告，旨在为纳税人享受中国政府对外签署的税收协定待遇开具《税收居民证明》提供便利。这份公告将于 2016 年 10 月 1 日正式生效。这份公告主要有以下重要变化：

With the encouragement of the Chinese government on “Going-Out” and “One Belt, One Road” strategies, the Chinese State Administration of Taxation published an announcement on June 28, 2016 in aim to better serve the taxpayers regarding issuance of “Certificate of Chinese Tax Resident” for its application of the tax treaty benefits to the counter-party authorities. The Announcement will take into effect on October 1, 2016. Below we summarized some key changes in the Announcement for reference.

简化了办理流程

Simplify the process

具有开具权限的主管税务机关由原市级税务机关改为县税务机关，优化了管理流程。

The competent tax authority for issuance the certificate is degraded from previous municipal tax authority to county level, which optimizes the administration process.

明确了办理时限

Clarify the timeline

主管税务机关应自受理申请之日起 10 个工作日内签发《税收居民证明》或者将不予开具的理由书面告知申请人。主管税务机关无法准确判断居民身份的，需要报告上级税务机关的，应当自受理申请之日起 20 个工作日内办结。

The application should be completed within 10 working days with the issued certificate or written rejection with reasons; while complicated cases require for further assessment by superior tax authority, the timeline has been further extended for another 20 working days.

申请开具《税收居民证明》所需文件

- > 《中国税收居民身份证明》申请表;
- > 与拟享受税收协定待遇的收入有关的合同、协议、董事会或者股东会决议、支付凭证等证明材料;
- > 申请人为个人且在中国境内有住所的, 提供因户籍、家庭、经济利益关系而在中国境内习惯性居住的证明材料, 证明材料包括申请人身份信息、说明材料或者其他材料;
- > 申请人为个人且无住所、在中国境内居住满一年的, 提供在中国境内实际居住时间的相关证明材料, 证明材料包括护照信息、说明材料或者其他材料;
- > 境内、外分支机构通过其总机构提出申请时, 还需提供总分机构的登记注册情况;
- > 以合伙企业的中国居民合伙人提出申请时, 还需提供合伙企业登记注册情况。

随着我国企业对外投资不断增加, 越来越多的纳税人需要开具《中国税收居民身份证明》。然而, 由于地方税务机关对于这项业务的操作并不完全熟悉, 不仅时限不确定而且所需的资料相当复杂, 因此在实际操作中变得十分困难。随着公告的发布, 全国将采用统一方法, 此前的状况也有望明显改善。这一举动再次表明中国政府对企业对外发展支持的决心。

联系人 / Contact

Frances Gu
 业务合伙人 / Associate Partner
 中国注册会计师 / Chinese Certified Public Accountant
 电话 / Tel.: + 86 (21) 61 63 – 52 38
 邮箱 / E-Mail: frances.gu@roedl.pro

Itemize the required documents for certificate application

- > Application form of residence certificate;
- > The documents related to the income being eligible for treaty benefits such as contracts, agreements or resolutions of the board of directors or the meeting of shareholders and evidence of payments;
- > In the case of an individual who has a dwelling within China, the evidence of an habitual abode by virtue of registration, family, economic interest, including personal information of the applicant and other information required;
- > In the case of an individual who does not have a dwelling within China and has resided in China for more than 1 year, the evidence of the actual duration of residence in China including the entrance and departure records of the passport and other information required;
- > The application filed by the head office for its domestic or foreign branch must contain the information on the registration of the head office;
- > The application filed by the Chinese partner of a partnership must contain the information on the registration of the partnership.

With the increase of the Chinese enterprises going out for overseas investments, more and more taxpayers require for the issuance of the Chinese tax resident certificate. However, this service has still been not quite familiar with the local tax authorities and therefore lead to the difficulties in practice from perspectives on both the uncertain timeline and too complicated document requirement. With the national-wide unified approach introduced by the Announcement, it is expected that the situation will be much improved and therefore demonstrates the Chinese authorities' resolution in encouraging the outbound business.

外商直接投资领域自 2016 年 10 月开始全面改革

Nils Naumann & Jianan Xu, Rödl & Partner 中国上海

2016 年 9 月 3 日，全国人民代表大会常务委员会在外商直接投资领域做出全面改革的决定。此次涉及修改与外国投资者最相关《中华人民共和国外资企业法》，《中华人民共和国中外合资经营企业法》以及《中华人民共和国中外合作经营企业法》

企业设立的简化

随着自 2016 年 10 月 1 日生效的相关法律变动以及商务部颁布的暂行办法，外商投资企业的设立程序已发生了巨大的改变。之前在设立过程中必经的商务部门审批程序将会被取消，并被在线备案程序所取代，这与现阶段在中国自由贸易试验区施行的制度相类似。商务部门的备案程序既可以在营业执照签发之前，也可在营业执照签发后 30 日内进行。暂行办法还规定，备案机构应当在收到申请并验证资料齐备的情况下，3 日内完成备案。若申请资料不齐全，外商投资企业应按要求在 15 日内补充相关信息。

对存续企业的影响

绝大多数外商投资企业会从本次改革中受益。在改革后，简化的在线备案制度适用于一系列之前需要商务部门审批的变更事项。在变更事项发生的三十日内，企业现在只需向地方的商务主管部门递交变更备案申请。这些变更涵盖：股东名称、企业内部机构、经营范围，投资者的变更，增加注册资本，股权质押设立，特定财产权利转让。

Comprehensive Reform in the Area of Foreign Direct Investment Has Taken Effect from October 2016

Nils Naumann & Jianan Xu, Rödl & Partner Shanghai, China

On September 3, 2016, the Standing Committee of the National People's Congress agreed to a comprehensive reform in the area of foreign direct investment. This reform applies in particular to highly relevant laws on Wholly Foreign Owned Enterprises (100% foreign invested subsidiaries) as well as Equity and Cooperative Joint Ventures.

Simplification of the company establishment process

According to the revision of the laws, which already came into effect on October 1, 2016 as well as Interim Measures released by the Ministry of Commerce (MOFCOM), the establishment procedure of foreign invested enterprises is significantly reformed. The approval procedure with the Ministry of Commerce, which was previously a mandatory requirement of the establishment process, is now largely abolished. A new online record-filing system will be used instead, which is similar to the system applied in the Chinese Free Trade Zones. The record-filing procedure with MOFCOM can generally be completed either prior to the issuance of the business license or within 30 days after collection of such license. The Interim Measures stipulate that the responsible authority shall complete the record-filing process within three working days after receipt and verification of the completeness of the application documents. In the event of incompleteness, the FIE shall supplement additional documents within fifteen working days as required.

Changes for existing companies

The new reform also carries advantages for most existing FIEs. According to the new regulations, the simplified online record-filing procedure also applies to a number of company changes, which previously required the approval of MOFCOM. Under the revised laws, such changes now merely require an application for record-filing with MOFCOM within 30 days upon occurrence of the change. The simplified registration procedure thereby covers changes as for instance of the company name, company's organs, business scope, investors or the conduction of capital increases. Moreover, the granting of equity pledges and the

在本次改革中值得注意的是，如果一家外商投资企业的股权是经过多家公司而被间接持有，而最终的母公司可以被认定为实际控制人，那么最终实际控制人的信息也须备案。当最终实际控制人的股权变动时，此类变更同样须备案。因此，这将导致中国境外交易对备案信息产生影响，比如说外商投资企业的股权是由一家香港的控股公司而持有的。

新规则的适用范围

我们从字面可理解，刚刚生效的法律变更对不受准入特别管理措施的外商投资企业产生影响。国家发展与改革委员会同商务部在 2016 年 10 月 8 日发布联合公告，准入特别管理措施范围可参照现行《外商投资产业指导目录》（投资目录）。该目录将投资分为鼓励类，限制类，禁止类。虽然中国政府在推进鼓励类投资项目，但也在目录中对这类投资设定了一定条件，比如中国股东的最低持股要求。因此发展改革委员会和商务部对目录的参照应当被理解为，那些经营范围不在《外商投资产业指导目录》中被列举的企业（因此这些经营范围是被允许的），可以通过此次改革从简化的备案程序中获利。

投资目录是否会随着现行的改革而进一步修订，或者其内容是否会被引入一张全国范围内通用的负面清单（该清单只包含受限/禁止的投资项目，并允许其它投资行为），目前尚不明确。

我们的观点

我们认为本次法律的变更有助于实质性加快公司设立程序和变更程序手续。新规定缩短了商务部门的流程。在线申请程序以及工作时限制度的设立预期将大幅度提高办事效率并节省时间。

transfer of property rights, are also merely subject to a record-filing procedure instead of the approval procedure at local office of MOFCOM.

Under the new reform it has to be noted, that in cases, in which shares of a FIE are held indirectly via several companies by an ultimate parent company and such ultimate parent company can therefore be seen as the actual controller, registration of such ultimate parent company is required. In the event the controlling ultimate parent company changes, such change is also subject to registration. Therefore, transactions outside China might also require registration by the FIE in China, for example, if shares of a FIE are held through a holding company in Hong Kong.

Applicable scope of the reform

According to the wording of the new regulations, the legal changes are applicable to those FIEs, which are not subject to “special entry administration measures” regarding market access in China. The National Development and Reform Commission (NDRC) together with MOFCOM issued a joint announcement on October 8, 2016, clarifying that such special entry administration measures for foreign investment shall be applied according to the provisions of the current version of the Catalogue for Guidance of Foreign Investment (Investment Catalogue). This Investment Catalogue classifies all investments into the categories “encouraged”, “restricted” and “prohibited”. Although encouraged investment projects are facilitated by the Chinese government, such investments are also often imposed with certain conditions in the Investment Catalogue, such as certain minimum ratios of Chinese shareholders. Therefore, the reference to the Investment Catalogue by the NDRC and MOFCOM can be interpreted in the way, that companies, whose business scope is not mentioned in the Investment Catalogue (and which are therefore “permitted”), fall under the scope of the new reform and thus benefit from the simplified record-filing procedure.

Whether the Investment Catalogue will be further amended in the course of the current reform or whether its content will be transferred into a nationwide so called “negative-list”, which merely lists restricted/prohibited investments and allows all other projects is currently uncertain and remains to be seen.

Our evaluation

From our perspective, the reform carries the potential to substantially facilitate the process of company establishments as well as the conduction of company modifications. The new rules simplify the processes at MOFCOM and the implementation of an online registration system as well as the stipulated response periods for the local bureaus of MOFCOM are expected to improve efficiency and save time.

随着现行改革的深入，任何有关市场准入的改革如果通过投资目录的修订或引进一个新的全国性的负面清单而发生，我们都将为您提供更新。

In the event in the course of the current reform any changes regarding market access for foreign investment through the revision of the Investment Catalogue or the introduction of a new nationwide negative list should occur, we will keep you updated.

联系人 / Contact



Nils Naumann

律师 / Attorney-at-Law

电话 / Tel.: + 86 (21) 61 63 – 53 00

邮箱 / E-Mail: nils.naumann@roedl.pro

最近出台重要法规回顾

商标法新规

在 2016 年 8 月 31 日，国家工商总局发布了《委托地方工商和市场监管部门受理商标注册申请暂行规定》（工商标字〔2016〕168 号，以下简称“本规定”）。本规定明确，经由国家工商总局商标局委托，县级以上（以省会城市、地级市为主）工商、市场监管部门应在当地政务中心或登记中心设立受理商标注册申请的服务窗口，以国家工商总局的名义，受理商标注册申请等业务。该规定自 2016 年 9 月 1 日起施行。这是第一次，商标申请人可以在地方工商行政管理部门和地方市场监管部门，而不是在国家工商行政管理局递交商标申请。但哪些地方行政部门已受国家工商总局的委托，以及本规定将如何在实践中予以实施，目前仍不明确。

Recent Important Regulation Highlight

New Regulation on Trademark

On August 31, 2016, the State Administration of Industry and Commerce (“SAIC”) issued the Interim Provisions of Entrusting Local Administrative Departments for Industry and Commerce and Market Supervision to Accept Applications of Trademark Registration (Notice Gong Shang Biao Zi [2016] No. 168, “the Provisions”). The Provisions specify that, entrusted by the Trademark Office of the SAIC, the local administrative departments for industry and commerce and market supervision above the county level (mainly provincial capitals and prefecture-level cities) shall establish windows for accepting applications of trademark registration in local government affairs centers or registration centers to handle services like accepting trademark registration applications on behalf of the SAIC. The Provisions came into force as of Sep. 1, 2016. For the first time, it is possible for trademark applicants to file the trademark application at the local administrative departments for industry and commerce and market supervision instead of at the SAIC. But which local administrative departments have been entrusted by the SAIC in this regard and how the Provisions will be implemented in practice still remain uncertain.

环保税草案公开征求意见

《中华人民共和国环境保护税法（草案）》日前面向社会公开征求意见。根据草案，环保税的纳税人为在中国领域和管辖的其他海域直接向环境排放应税污染物的企业事业单位和其他生产经营者，征税对象为大气污染物、水污染物、固体废物和噪声。

南京国地税联合签署首例集团内劳务服务费分摊协议

历时 4 个多月的谈判，南京市国税局、地税局联合与某跨国企业签署了服务费分摊管理协议。作为南京市首例跨国企业服务分摊事前管理协议，是转让定价管理的一项重要成果。该协议涉及的集中服务有职能、技术、行政等服务。此次国地税提前介入，充分考虑企业的合理诉求，为企业提出了调整分摊对象、服务费分摊比例和成本加成率等管理建议。

国家税务总局完善预约定价安排管理

国税总局近日发布 2016 年第 64 号公告及相关解读，进一步完善预约定价安排管理，公告自 2016 年 12 月 1 日起施行。作为国税发[2009]2 号文的第六章内容的替代，公告主要修改内容为：1) 下放了预约定价安排受理权限。2) 调整了谈签与执行的阶段。3) 强调了谈签意向的重要性。4) 增加了税务机关拒绝谈签意向、优先受理正式申请和拒绝正式申请的条款。5) 增加了单边预约定价安排信息交换条款。

Draft Environmental Protection Tax Law for public comments

Recently, the draft "Environmental Protection Tax Law of the People's Republic of China" has been issued for public comments. According to the draft law, taxpayers of environmental protection tax shall be enterprises, public institutions and others which discharge taxable pollutants directly to the environment within the territory of China and other water under the jurisdiction of China. Air pollutants, water pollutants, solid wastes and noise shall be subject to environmental protection tax.

First cost contribution arrangement on intra-group services concluded in Nanjing

The state and local tax bureaus of Nanjing, the provincial capital of Jiangsu Province, signed a cost contribution arrangement (CCA) on intra-group services with a multinational company after a negotiation of more than 4 months. This is the first CCA case in Nanjing and is reported as a significant achievement of transfer pricing management. The agreement covers the centralized services such as professional, technical and administrative services. To conclude this CCA, the tax bureaus have prepared the case at an early stage and gave full consideration to the reasonable demands of the taxpayer, and provided the taxpayer with the advice in respect of the services, ratio of allocation and the use of the cost plus method.

SAT improves the administration regarding Advance Pricing Agreement

Recently, the SAT issued the Public Notice 2016 No. 64 and relevant interpretation to improve the administration on advance pricing agreement ("APA"), which will take effective on December 1, 2016. As substitute for Chapter 6 of Guoshuifa [2009] No. 2, the Public Notice has following main changes: 1) Transfer the APA processing authority to a lower level; 2) Adjust the phase of discussion, conclusion and implementation; 3) Emphasize the importance of intention of discussion and conclusion; 4) Add the articles of rejecting the intention of discussion and conclusion, giving priority to formal application and rejecting formal application by tax authority; 5) Add the article of unilateral APA information exchange.

Our Tax Team Contact

Vivian Yao
Partner
Chinese Tax Advisor
E-Mail: vivian.yao@roedl.pro

Our Contact in Germany

Dr. Thilo Ketterer
Partner
German Public Auditor
E-Mail: thilo.ketterer@roedl.com

Our Legal Team Contact in Shanghai

Sebastian Wiendieck
Partner
Attorney-at-Law
E-Mail: sebastian.wiendieck@roedl.pro

Our Legal Team Contact in Guangzhou

Dr. Alexander Theusner
Associate Partner
Attorney-at-Law
E-Mail: alexander.theusner@roedl.pro

Our Offices in China

Shanghai Office
31/F LJZ Plaza
1600 Century Avenue
Pudong District, Shanghai
schanghai@roedl.pro
Tel: +86 21 6163 5200
Fax: +86 21 6163 5310

Beijing Office
Suite 2200 Sunflower Tower
37 Maizidian Street
Chaoyang District, Beijing
peking@roedl.pro
Tel: +86 10 8573 1300
Fax: +86 10 8573 1399

Guangzhou Office
45/F, Metro Plaza
No. 183 Tian He North Road
Guangzhou
kanton@roedl.pro
Tel: +86 20 2264 6388
Fax: +86 20 2264 6390

Special Consultant for International Taxation

Dr. Hans R. Weggenmann
Managing Partner
Certified Tax Consultant
E-Mail: hans.weggenmann@roedl.de

Our Contact in Germany

Mathias Müller
Partner
Certified Tax Consultant, MBA, CPA
E-Mail: mathias.mueller@roedl.pro

Our Legal Team Contact in Beijing

Dr. Martin Seybold
Partner
Attorney-at-Law
E-Mail: martin.seybold@roedl.pro

Our Legal Team Contact in Hong Kong

Florian von Ortenberg
Partner, Attorney-at-Law
Registered Foreign Lawyer (HK)
E-Mail: florian.vonOrtenberg@roedl.pro

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.

Imprint: Issue October 2016

Publisher: **Rödl & Partner China**
31/F LJZ Plaza
1600 Century Avenue
Pudong District, Shanghai

Responsible for the content:
Vivian Yao – vivian.yao@roedl.pro

Layout/Type: Elisa Guo – elisa.guo@roedl.pro

This Newsletter offers non-binding information and is intended for general information purposes only. It is not intended as legal, tax or business administration advice and cannot be relied upon as individual advice. When compiling this Newsletter and the information included herein, Rödl & Partner used every endeavour to observe due diligence as best as possible, nevertheless Rödl & Partner cannot be held liable for the correctness, up-to-date content or completeness of the presented information.

The information included herein does not relate to any specific case of an individual or a legal entity, therefore, it is advised that professional advice on individual cases is always sought. Rödl & Partner assumes no responsibility for decisions made by the reader based on this Newsletter. Should you have further questions please contact Rödl & Partner contact persons.