



Building a better
working world

Issue No. 2020040
16 October 2020

China Tax Center China Tax & Investment Express

*China Tax & Investment Express (CTIE)** brings you the latest tax and business announcements on a weekly basis. We selected some comparatively key announcements to provide for a synopsis and we also provide a link that leads you to the full content of each latest announcement (in Chinese). Please feel free to contact your EY client service professionals for further assistance if you find the announcements have an impact on your business operations.

CTIE does not replace our *China Tax & Investment News** which will continue to be prepared and distributed to provide more in-depth analyses of topical tax and business developments in China.

*If you wish to access the previous issues of *CTIE* and *China Tax & Investment News*, please contact us.

Tax circulars

- ▶ **Public Notice (PN) regarding various Value-added Tax (VAT) policies including those related to the transfer of shares for free (MOF/STA PN [2020] No. 40)**

Synopsis

On 29 September 2020, the Ministry of Finance (MOF) and State Taxation Administration (STA) jointly released MOF/STA PN [2020] No. 40 ("PN 40") to clarify the following VAT policies:

Article 1 - Transfer of shares for free

VAT policy

As prescribed in Attachment II of Caishui [2016] No. 36 ("Circular 36", i.e., Notice regarding the final stage of the VAT pilot arrangements), transfer of financial products shall be subject to VAT on a net basis, i.e., the sales price minus the purchase price.

In this respect, PN 40 further clarified that where a taxpayer (i.e., the transferor) transfers shares (股票) to another taxpayer (i.e., the transferee) for free, the transferor should calculate VAT under the category of “transfer of financial products” and the sales price shall be deemed at the purchase price:

$$\text{VAT payable by the transferor} = (\text{sales price} - \text{purchase price}) \times 6\% = 0$$

Where the transferee later transfers the shares to another acquirer, the relevant VAT shall still be calculated under the category of “transfer of financial products” and the purchase price to be adopted as cost in the calculation shall be the deemed sales price of the last transferor:

$$\text{VAT payable by the transferee} = (\text{sales price} - \text{purchase price of the last transferor}) \times 6\%$$

Applicable scope of the VAT policy

It is worth noting that, Attachment III of Circular 36 specifies that, transfer of financial products by individuals (including natural persons and self-employed industrial and commercial households) is exempt from VAT. In this respect, individuals have already been excluded from the intended transferor as prescribed in Article 1 of PN 40.

In addition, the original term used in PN 40 is transfer of shares (i.e., 股票) which refers to shares of listed companies, since transfer of equity of private companies is not subject to VAT.

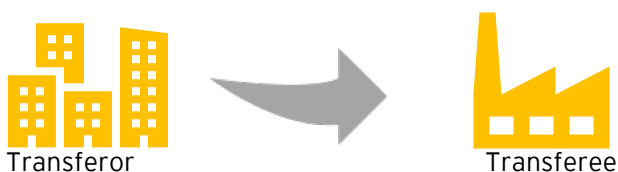
Based on the above, this VAT policy for transfer of shares for free only applies to corporate taxpayers that transfer shares of listed companies for free.

Other taxes involved and considerations

Apart from VAT, the transfer may be subject to Corporate Income Tax (CIT) as well as Stamp Duty (SD).

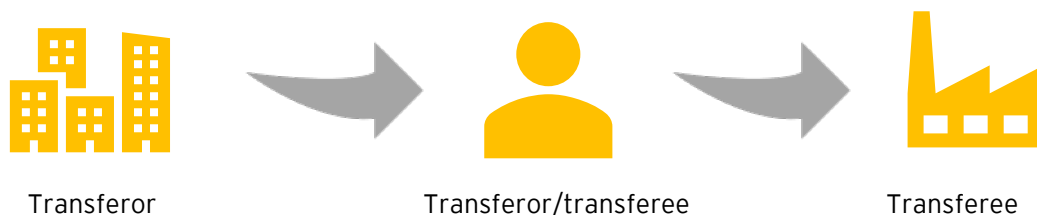
To provide a complete picture, we summarized taxes triggered in a transaction of share transfer for free in the following illustrations:

A company transfers shares to another company for free



Taxes triggered	Taxpayer	Tax treatments
VAT	Transferor	Nil
CIT	Transferor	This transaction may be subject to CIT as deemed sales ¹ or special tax treatments ² if the relevant criteria are met.
	Transferee	The transferee needs to recognize the shares as a “donation income” on the date of receipt or apply special treatments ² if the relevant criteria are met.
SD	Transferor	0.1% on the transaction amount for transferor.

A company transfers shares to another company for free and then the individual transfers the shares to a company for a consideration



Transaction 1: Company to Individual

Taxes triggered	Taxpayer	Tax treatments
VAT	Transferor (company)	Nil
CIT	Transferor (company)	This transaction may be subject to CIT as deemed sales ¹ .
IIT	Transferee (individual)	The transferee needs to recognize the shares as a “donation income” on the date of receipt and subject to IIT.
SD	Transferor (company)	0.1% on the transaction amount for transferor.

Transaction 2: Individual to company

Taxes triggered	Taxpayer	Tax treatments
VAT	Transferor (individual)	Exempt ³
IIT	Transferor (individual)	Exempt ⁴
SD	Transferor individual)	0.1% on the transaction amount for transferor.

However, in practice, it is always important to consider the potential tax risks before implementing any arrangements, e.g., whether such arrangements can be justified with reasonable business purposes.

Article 2 - VAT exemption for interest income derived by financial institutions

From 20 August 2019, interest income derived by financial institutions for granting loans with a term of more than one year but less than five years to small and micro-sized enterprises and self-employed industrial and commercial households may be exempt from VAT before 31 December 2020 according to Caishui [2018] No. 91 (“Circular 91”, i.e., Notice regarding the exemption of VAT for financial institutions’ interest income from the loans to small and micro-sized enterprises) if the interest rate of the loan agreement is in accordance with the Loan Prime Rate (as known as “LPR”) announced by the National Interbank Funding Center.

Article 3 - Land expropriation

PN 40 further elaborates that the land expropriation by the owner with compensation to the user for the land and the relevant movable/immovable assets should apply the VAT exemption policy as prescribed in Attachment III of Circular 36, i.e., user returning the land use right to landowner.

PN 40 took effect from its promulgation date (i.e., 29 September 2020, except for the VAT exemption for interest income derived by financial institutions) and applies to any unsettle cases.

¹ According to Guoshuihan [2008] No. 828 (“Circular 828”, i.e., Notice regarding the CIT treatments for assets transfer by enterprises) and STA PN [2016] No. 80 (“PN 80”, i.e., PN regarding certain issues related to CIT), transfer of shares for free should be subject to CIT at deemed sales based on the fair market value.

² PN 80 specifies that qualifying transfers of equities or assets are entitled to special tax treatment as prescribed in Article 3 of Caishui [2014] No. 109 (“Circular 109”, i.e., Notice regarding CIT treatments for promotion of company restructuring).

³ According to Attachment III of Circular 36, transfer of financial products by individuals (including natural persons and self-employed industrial and commercial households) is exempt from VAT.

⁴ In the illustrations, the shares of listed company only refer to general public shares, i.e., shares of companies listed in Shanghai/Shenzhen Securities Exchange. According to Caishui [1998] No. 61 (“Circular 61”, i.e., Notice regarding IIT Exemption for income derived by individuals from sales of shares of listed companies), income derived from transfer of shares of companies listed in Shanghai/Shenzhen Securities Exchange that they obtained via public offering or secondary market are exempt from IIT.

You can click this link to access the full content of PN 40:

<http://www.chinatax.gov.cn/chinatax/n359/c5157154/content.html>

You can click this link to access the full content of Circular 36:

<http://www.chinatax.gov.cn/n810341/n810755/c2043931/content.html>

You can click this link to access the full content of Circular 828:

<http://www.chinatax.gov.cn/chinatax/n810341/n810765/n812171/n812685/c1191057/content.html>

You can click this link to access the full content of PN 80:

<http://www.chinatax.gov.cn/n810341/n810755/c2410266/content.html>

You can click this link to access the full content of Circular 109:

<http://www.chinatax.gov.cn/n810341/n810755/c1451490/content.html>

You can click this link to access the full content of Circular 61:

<http://www.chinatax.gov.cn/chinatax/n363/c1226/content.html>

► **Notice regarding measures on enhancing convenience in handling tax matters and optimizing tax environment (Shuizongfa [2020] No. 48)**

Synopsis

On 28 September 2020, 13 ministries of the central government jointly introduced several measures on enhancing convenience in handling tax matters and optimizing tax environment via Shuizongfa [2020] No. 48 (“Circular 48”).

Some key features of the measures include:

- Optimize the mechanism for implementing policies.
- Make full use of big data and ensure that all policies are fully enjoyed.
- Simplify preferential treatment process.
- Improve the implementation efficiency of input VAT credit refund policy.
- Expand the scope of consolidated tax filing.
- Reduce the time and frequency of tax payment.
- Vigorously promote online tax services.
- Promote the reform of electronic invoices, improve efficiency of tax matters handling and reduce burden.
- Optimize tax enforcement and protect the legitimate rights and interests of market entities.
- Strengthen the follow-up work to ensure efficiency and full implementation of measures.

Taxpayers are advised to make reference to Circular 48 for greater details. If in doubt, consultations with professionals are always recommended.

You can click this link to access the full content of Circular 48:

<http://www.chinatax.gov.cn/chinatax/n810341/n810825/c101434/c5157079/content.html>

Business circulars

- ▶ **Administrative Measures on Domestic Securities and Futures Investments by Qualified Foreign Institutional Investors (QFII) and RMB Qualified Foreign Institutional Investors (RQFII) (CSRC/PBOC/SAFE Order [2020] No. 176)**
- ▶ **Regulations on certain matters related to the implementation of the “Administrative Measures on Domestic Securities and Futures Investments by QFII and RQFII” (CSRC PN [2020] No. 63)**

Synopsis

To further open up the capital market, on 25 September 2020, the China Securities Regulatory Commission (CSRC), People’s Bank of China (PBOC) and State Administration of Foreign Exchange (SAFE) jointly released the Administrative Measures on Domestic Securities and Futures Investments by QFII and RQFII (hereinafter referred to as the “Administrative Measures”) via CSRC/PBOC/SAFE Order [2020] No. 176. On the same day, the CSRC released CSRC PN [2020] No. 63 (“PN 63”) to further specify matters related to the implementation of the Administrative Measures. Both the Administrative Measures and PN 63 shall become effective on 1 November 2020.

Key features of the Administrative Measures and PN 63 include:

Lower the threshold of market access

According to the Administrative Measures, the administration for market access for QFII and RQFII is unified, which means that a foreign institutional investor only needs to apply the status once to engage in both investment of offshore RMB and foreign currency investments.

Accordingly, the application procedures/documents and approval procedures are simplified. An applicant is required to complete the application form for QFII/RQFII status online and submit the relevant documents via its delegated domestic custodian.

Expand scope of investment

According to the Administrative Measures, QFII/RQFII would be allowed to invest in an extended list of securities and financial derivatives including but not limited to securities listed on NEEQ, private investment funds, financial futures, commodity futures and options, etc.

Strengthen supervision

It is emphasized in PN 63 that the domestic custodian, security companies and future companies are obligated to supervise the transactions and flow of capital of QFII/RQFII and report any exceptional conditions or violations to the CSRS, PBOC and SAFE.

On the other hand, the security exchanges, securities registration and settlement agencies as well as institutions overseeing the capital market shall report the status of domestic investments periodically. The CSRC, PBOC and SAFE shall also establish a mechanism to share the respective information.

Relevant investors are advised to refer to the Administrative Measures and PN 63 for greater details. If in doubt, consultations with professionals are always recommended.

You can click this link to access the full content of the Administrative Measures:

http://www.csrc.gov.cn/pub/zjhpublic/zjh/202009/t20200925_383650.htm

You can click this link to access the full content of PN 63:

http://www.csrc.gov.cn/pub/zjhpublic/zjh/202009/t20200925_383651.htm

▶ **Decision on cancelling or delegating a batch of administrative licensing items (Guofa [2020] No. 13)**

Synopsis

On 13 September 2020, the State Council released Guofa [2020] No. 13 (“Circular 13”) to announce the decision on cancelling 29 administrative licensing items and delegating approval on other 4 items to lower administrative levels.

Some key items among them are as follows:

Items	Interim- and post-event supervisions
Cancel the approval of foreign-invested telecommunications business	<ul style="list-style-type: none"> ▶ Strictly check the shareholding restriction of foreign-invested telecommunications enterprises. ▶ Strengthen the monitoring of daily business activities of foreign-invested telecommunications enterprises. ▶ Any violation of laws and regulations shall be investigated and penalized in accordance with the law and the results shall be disclosed to the public. ▶ Implement credit supervision and differentiated supervision.
Cancel the approval of bilateral bidders in the interbank bond market	<ul style="list-style-type: none"> ▶ Establish and improve the incentive and restraint mechanism for market-making business, and guide market-making institutions to improve service quality. ▶ Establish a transaction report database and strengthen trade statistics. ▶ Strengthen self-discipline management in the industry.
Cancel the approval requirement for opening a corporate bank account	<ul style="list-style-type: none"> ▶ Commercial banks shall then check the information of enterprises’ business registration, relevant personnel and tax payment record online, and push enterprises’ bank account information to the PBOC in a timely, comprehensive and accurate manner as required. ▶ Enhance the enforcement and inspection of commercial banks through the supervision mechanism of “random Inspection and public release”. ▶ Improve the inter-departmental information sharing mechanism, explore the use of high-tech means, and enhance the effectiveness of interim- and post-event supervisions.
Cancel the approval of export food producers	<ul style="list-style-type: none"> ▶ Replace approval with online record filing. ▶ Strengthen information sharing between customs and market supervision authorities. ▶ Coordinate with designated competent authorities of export destination countries.
Cancel the approval of non-operating general aviation registration	<ul style="list-style-type: none"> ▶ Replace approval with record filing. ▶ Establish and improve the record filing system of non-operating general aviation. ▶ Supervise and implement the insurance system of non-operating general aviation. ▶ Implement credit supervision in accordance with the law.

Items	Interim- and post-event supervisions
Cancel the approval of domestic postal and communications business	<ul style="list-style-type: none"> ▶ Improve the administration over postal enterprises in relation to entrusting third parties to provide services; and urge postal enterprises to fulfill principal responsibilities. ▶ Implement the “random Inspection and public release” supervision of third-party enterprises entrusted by postal enterprises. ▶ Implement credit supervision in accordance with the law.
Cancel the approval of investment quota, accounts, fund remittance and foreign exchange registration certificate issuance of QFIIs.	<ul style="list-style-type: none"> ▶ Optimize macro and prudential administration, explore and improve price-oriented macro and prudential administrative measures. ▶ Strengthen foreign exchange registration and supervision; enhance risk monitoring and early warning of cross-border capital flows. ▶ Strengthen market supervision and administration through inter-departmental collaboration.
Delegate the approval of refined oil retail business to lower administrative levels	<ul style="list-style-type: none"> ▶ Designated authorities shall strictly implement the supervision of the refined oil circulation industry and carry out “random Inspection and public release” supervision. ▶ Local governments shall strictly implement territorial supervision responsibilities, establish corporate credit records and incorporate them into the national credit information sharing platform. ▶ Relevant authorities shall strictly implement special supervision responsibilities. ▶ Strengthen the regulatory information sharing in the refined oil retail industry.

Relevant enterprises are advised to make reference to Circular 13 for more details of the cancelled and delegated items.

You can click this link to access the full content of Circular 13:
http://www.gov.cn/zhengce/content/2020-09/21/content_5545345.htm

Customs circular

- ▶ **PN regarding a list of the second batch of anti-cancer drugs and drugs for the treatment of rare diseases that can apply special VAT policy (MOF/GAC/STA/NMPA PN [2020] No. 39)**

Synopsis

According to Caishui [2018] No. 47 (“Circular 47”, i.e., Notice regarding VAT policies on anti-cancer medicine) and Caishui [2019] No. 24 (“Circular 24”, i.e., Notice regarding VAT policies for drugs to treat rare diseases), general VAT taxpayers engaging in the manufacturing, wholesale, or retail of anti-cancer drugs or drugs for the treatment of rare diseases may choose to apply the simplified VAT calculation method at a collection rate of 3%. The import VAT on imported anti-cancer drugs and drugs for the treatment of rare diseases shall be levied at a reduced rate of 3%.

To encourage the development of the pharmaceutical industry, on 30 September 2020, the MOF, General Administration of Customs (GAC), STA and National Medical Products Administration (NMPA) jointly released MOF/GAC/STA/NMPA PN [2020] No. 39 ("PN 39") to publish a list of the second batch of anti-cancer drugs and drugs for the treatment of rare diseases that can apply the relevant VAT policy.

According to PN 39, from 1 October 2020, the VAT policies as prescribed in Circular 47 and Circular 24 shall be applicable to the anti-cancer drugs and drugs for the treatment of rare diseases listed in Attachment I of PN 39. In addition, a list of the revised harmonized system code (i.e., HS Code) of the first batch of the above-mentioned drugs was announced via the Attachment II of PN 39.

Relevant taxpayers are encouraged to read PN 39 for more details. If in doubt, consultation with professionals are always recommended.

You can click this link to access the full content of PN 39:

http://szs.mof.gov.cn/zhengcefabu/202009/t20200930_3598458.htm

You can click this link to access the full content of Circular 47:

<http://www.chinatax.gov.cn/n810341/n810755/c3421680/content.html>

You can click this link to access the full content of Circular 24:

<http://www.chinatax.gov.cn/n810341/n810755/c4082485/content.html>

Other business and customs related circulars publicly announced by central government authorities in the past week:

- ▶ **Notice regarding the "Guiding Opinions on the Services of People's Court for Ensuring Greater Opening-up" (Fafa [2020] No. 37)**
<http://cicc.court.gov.cn/html/1/218/149/192/1699.html>
- ▶ **Notice regarding cancelling and integrating a batch of foreign exchange accounts (Huizongfa [2020] No. 73)**
<http://m.safe.gov.cn/safe/2020/0925/17213.html>
- ▶ **PN regarding relevant arrangements for improving the risk management of funds transfer and foreign exchange under the bond connect scheme**
<https://www.safe.gov.cn/safe/2020/0113/15143.html>
- ▶ **PN regarding matters related to the manufacturing of imported medical machines and products of China's domestic enterprises (NMPA PN [2020] No. 104)**
http://mpa.gd.gov.cn/zwgk/gzwl/content/post_3093552.html
- ▶ **Notice regarding the "Implementation Rules on the Statistics and Declaration of International Receipts and Payments Through Banks" (Huifa [2020] No. 16)**
<https://www.safe.gov.cn/xinjiang/2018/1010/713.html>
- ▶ **Notice regarding public opinion consultation on the "Measures for the Supervision on Internet Insurance Business (Discussion Draft)"**
http://www.moj.gov.cn/government_public/content/2020-09/28/657_3257133.html
- ▶ **Guiding opinions on accelerating the promotion of trans-provincial government service (Guobanfa [2020] No. 35)**
http://www.gov.cn/zhengce/content/2020-09/29/content_5548125.htm
- ▶ **Catalog of Agencies for Processing Complaints of Foreign-invested Enterprises (FIEs)**
<http://images.mofcom.gov.cn/wzs/202010/20201012141854325.pdf>

▶ **Guidance of FIEs' Complaints Processing Centers**

<http://www.mofcom.gov.cn/article/b/f/202009/20200903005437.shtml>

▶ **PN regarding adjusting the electronic data of passenger manifests of entry and exit air transportation facilities (GAC PN [2020] No. 112)**

<http://www.customs.gov.cn/customs/302249/2480148/3306568/index.html>



Contact us

For more information, please contact your usual EY contact or one of the following EY's China tax leaders.

Author - China Tax Center

Jane Hui
+852 2629 3836
jane.hui@hk.ey.com

Greater China Tax Leader

Henry Chan
+86 10 5815 3397
henry.chan@cn.ey.com

Our tax leaders by market segment and service areas

Martin Ngai (China North)

+86 10 5815 3231
martin.ngai@cn.ey.com

Patricia Xia (China Central)

+86 21 2228 2878
patricia.xia@cn.ey.com

Ho Sing Mak (China South)

+86 755 25028289
Ho-Sing.Mak@cn.ey.com

David Chan (Hong Kong SAR/Macau SAR)

+852 2629 3228
david.chan@hk.ey.com

Heidi Liu (Taiwan)

+886 2 2757 8888
heidi.liu@tw.ey.com

Carrie Tang

Business Tax Services
+86 21 2228 2116
carrie.tang@cn.ey.com

Vickie Tan

Global Compliance and Reporting
+86 21 2228 2648
vickie.tan@cn.ey.com

Becky Lai

Tax Policy
+852 2629 3188
becky.lai@hk.ey.com

Andrew Choy

International Tax and Transaction Services
+86 10 5815 3230
andrew.choy@cn.ey.com

Travis Qiu

ITTS - Transfer Pricing
+86 21 2228 2941
travis.qiu@cn.ey.com

Jesse Lv

ITTS - Transaction Tax
+86 21 2228 2798
jesse.lv@cn.ey.com

Kenneth Leung

Indirect Tax
+86 10 5815 3808
kenneth.leung@cn.ey.com

Bryan Tang

Indirect Tax - Global Trade
+86 21 2228 2294
bryan.tang@cn.ey.com

Patricia Xia

Tax Technology
and Transformation
+86 21 2228 2878
patricia.xia@cn.ey.com

Paul Wen

People Advisory Services
+852 2629 3876
paul.wen@hk.ey.com

About EY

EY is a global leader in assurance, tax, strategy, transaction and consulting services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation is available via ey.com/privacy. For more information about our organization, please visit ey.com.

© 2020 Ernst & Young, China
All Rights Reserved.

APAC no. 03011202
ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, legal or other professional advice. Please refer to your advisors for specific advice.

ey.com/china

Follow us on WeChat

Scan the QR code and stay up to date with the latest EY news.

