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By Fortran Law Firm

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## **Editor's Note**

The February 2025 issue of China Tax Lawyer offers timely insights and practical guidance for navigating China's evolving tax landscape. In this issue, we explore the implications of the newly enacted VAT Law, with a focus on its effects on tax professionals and service providers. We also present a detailed analysis of subjective intent in tax evasion cases, highlighting divergent judicial interpretations and administrative practices. Through a case involving legacy property ownership, we examine whether court-confirmed ownership qualifies for tax exemptions. In addition, we provide summaries of recent regulatory updates, including the Supreme People's Court's guidance on interest calculation in foreign currencies and new measures governing the annual settlement of consolidated individual income tax. Finally, our ForTran Update features firm news, including a fund formation project and our recent office relocation.

# Insights | Key Changes in China's VAT Law: Implications for Tax Professionals

By Susan Yang, Partner, ForTran Law Firm

Compared with the Interim Regulations on Value-Added Tax (VAT) and its implementing rules, as well as Circular [2016] No. 36 issued by the Ministry of Finance and the State Taxation Administration, the Value-Added Tax Law of the People's Republic of China (hereinafter referred to as "VAT Law") introduces several changes regarding taxable elements. For third-party institutions providing tax-related services to taxpayers, the following three aspects of the VAT Law warrant particular attention.

## I. Deemed Taxable Transactions

Both the Implementing Rules of the Interim Regulations on VAT and Circular [2016] No. 36 stipulated scenarios of "deemed sales." However, the VAT Law does not retain the term "deemed sales" but instead adopts the expression "deemed taxable transactions." The Implementing Rules of the Interim Regulations on VAT (2011 revised) listed eight types of "deemed sales of goods" while the VAT Law lists only three categories of "deemed taxable transactions":

1. Enterprises and individual industrial and commercial households using self-produced or commissioned-processed goods for collective welfare or personal consumption;
2. Enterprises and individual industrial and commercial households transferring goods free of charge;
3. Enterprises and individuals transferring intangible assets, immovable property, or financial products free of charge.

However, taxpayers should not assume that the "deemed sales" provisions have been entirely abolished:

1. The scenario of "distributing self-produced, commissioned-processed, or purchased goods to shareholders or investors" is now categorized under non-monetary economic benefits

obtained by taxpayers from taxable transactions in VAT Law.

2. The scenario of "providing self-produced, commissioned-processed, or purchased goods as free gifts to other enterprises or individuals" falls under the VAT Law's definition of "free transfer of goods."
3. "Consignment sales" inherently constitute "sales." Both "buyout consignment sales" and commission-based consignment sales (where only an agency fee is charged) can be governed by the corresponding VAT rules without the need for "deemed" treatment.
4. The provision regarding "taxpayers with two or more establishments under unified accounting who transfer goods between establishments for resale, except where the establishments are located in the same county (or city)" must be examined in conjunction with the VAT filing location rules and subsequent implementing regulations. The VAT Law stipulates that "a taxpayer with a fixed production or business location shall file tax returns with the tax authority at the location of its establishment or residence. If the head office and branches are located in different counties (or cities), they shall file tax returns separately with their respective local tax authorities; subject to approval by provincial or higher-level finance and tax authorities, the head office may file a consolidated return at its location." Clarification is still needed regarding how to handle output and input VAT when goods are transferred between head offices and branches located in different counties (or cities).

## **II. Treatment of "Significantly High Sales Amounts Without Justifiable Reasons"**

The VAT Law includes "significantly high sales amounts without justifiable reasons" as a condition under which tax authorities may assess the taxable sales amount.

Previously, the Interim Regulations on VAT and its implementing rules only addressed cases where sales amounts were "significantly low," without provisions on excessively high sales prices. Circular [2016] No. 36, however, granted tax authorities the power to determine sales amounts when taxable transactions were conducted at abnormally high prices without legitimate commercial purposes.

Notably, the Tax Collection and Administration Law does not currently include provisions on

"significantly high sales amounts without justifiable reasons." This raises the question of whether amendments to the Tax Collection and Administration Law will be necessary to align with the VAT Law.

### **III. Tax Rate and Levy Rate Determination for Transactions Involving Multiple Rates**

Article 13 of the VAT Law, which addresses cases where "a taxable transaction involves two or more tax rates or levy rates," can be deemed as corresponding to the "mixed sales" concept in the Implementing Rules of the Interim Regulations on VAT and Circular [2016] No. 36. These earlier regulations defined mixed sales respectively as below:

- ◆ "A single sales transaction involving both goods and non-VAT taxable labor services shall be considered a mixed sale."
- ◆ "A single sales transaction involving both goods and services shall be considered a mixed sale."

Under the VAT Law, the tax rate or levy rate applicable to such transactions shall be determined based on the primary business involved in the taxable transaction.

Circular [2016] No. 36 prescribed specific rules for mixed sales:

- ◆ Mixed sales conducted by enterprises or individual industrial and commercial households engaged in the production, wholesale, or retail of goods shall be subject to VAT as the sale of goods.
- ◆ Mixed sales conducted by other entities or individual industrial and commercial households shall be subject to VAT as the sale of services.

### **Partner Viewpoints | Subjective Intent in Tax Evasion and the Allocation of the Burden of Proof**

*By Susan Yang, Partner, ForTran Law Firm*

#### **I. Case Summary**

On February 24, 2012, the Jining Municipal Tax Inspection Bureau of the State Taxation Administration of Shandong Province (hereinafter referred to as "Jining Tax Inspection Bureau") issued a "Notice of Confirmed False Invoicing" to the Beijing Municipal Tax Inspection Bureau of the State Taxation Administration (hereinafter referred to as "Beijing Tax Inspection Bureau"). The notice stated that 186 invoices had been confirmed as falsely issued, involving a total invoice amount of RMB 183,583,119.70. The materials provided included a detailed list of VAT special invoices falsely issued by Jining Hongyuan Chemical Trade Co., Ltd. (hereinafter referred to as "Hongyuan Company"). Subsequently, the Beijing Tax Inspection Bureau forwarded these materials to the Shunyi District Office of the State Taxation Administration (hereinafter referred to as "Shunyi Tax Bureau") and designated it to conduct an investigation and handle the case.

Beijing Zhongyou Guomen Fuel Sales Co., Ltd. (hereinafter referred to as "Zhongyou Guomen") had a business relationship with Hongyuan Company involving refined oil transactions. On March 23, 2012, the Shunyi Tax Bureau initiated a special tax inspection against Zhongyou Guomen. Following the investigation, one of the violations identified was that between December 2010 and February 2011, Zhongyou Guomen obtained 186 VAT special invoices issued by Hongyuan Company without any actual goods transactions. These invoices amounted to RMB 183,583,119.74, with a VAT amount of RMB 31,209,130.26, bringing the total invoice amount to RMB 214,792,250. Zhongyou Guomen deducted the input VAT of RMB 31,209,130.26 in its tax filings for December 2010, January 2011, and February 2011.

Pursuant to Article 63 of the Tax Collection and Administration Law and Article 1 of the Notice of the State Taxation Administration on the Handling of Taxpayers Obtaining Fraudulent VAT Special Invoices (Guo Shui Fa [1997] No. 134, hereinafter referred to as "Circular 134"), Zhongyou Guomen's conduct constituted tax evasion.

On July 15, 2013, the Shunyi Tax Bureau issued the Tax Administrative Penalty Decision (Shun Guo Fa [2013] No. 212) against Zhongyou Guomen, imposing, among other penalties, a fine equal to the amount of tax evaded, totaling RMB 31,209,130.26, in accordance with Article 63 of the Tax Collection and Administration Law.

Furthermore, the Shunyi Tax Bureau determined that Zhongyou Guomen's conduct of falsely issuing VAT special invoices was suspected of constituting a criminal offense and met the criteria for referral to judicial authorities. Accordingly, on August 7, 2013, the case was transferred to the Shunyi Branch of the Beijing Municipal Public Security Bureau for review.

On July 2, 2015, the Third Branch of the Beijing Municipal People's Procuratorate issued a Decision Not to Prosecute ([2015] No. 17) regarding Xu Guoli, the deputy general manager of Zhongyou Guomen responsible for fuel sales and procurement. The decision confirmed that between December 2010 and March 2011, Xu, while serving as deputy general manager overseeing company operations, facilitated Zhongyou Guomen's acquisition of 186 VAT special invoices issued by Hongyuan Company despite the absence of actual goods transactions. Zhongyou Guomen subsequently issued 193 VAT special invoices in Beijing to three other companies, involving a total VAT amount of RMB 32,082,278.45. The Third Branch of the Beijing Municipal People's Procuratorate ultimately decided not to prosecute Xu Guoli, on the grounds that he was not subjectively aware that there were no actual transactions and therefore lacked criminal intent.

## **II. Author's Opinion**

### **(A) Is Intent a Constituent Element of Tax Evasion?**

There has been ongoing debate over whether intent is a necessary constituent element of tax evasion as an administrative violation. Following the enactment of the Administrative Penalty Law of the People's Republic of China (2021 Amendment), an increasing number of opinions support the view that, under Article 33, Paragraph 2 of this law, the determination of tax evasion should be predicated on the taxpayer's intent. However, in practice, some courts maintain that tax evasion does not necessarily require intent. For instance, in the case of *Qinghai Zhaojin Trading Co., Ltd. v. Xining Economic and Technological Development Zone Tax Bureau*,<sup>1</sup> the appellate court held that "Article 63 of the Tax Collection and Administration Law does not explicitly stipulate that tax evasion must involve the taxpayer's

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<sup>1</sup> *Qinghai Zhaojin Trading Co., Ltd. v. Xining Economic and Technological Development Zone Tax Bureau Inspection Bureau, State Taxation Administration – Administrative Penalty Case*, Qinghai Intermediate People's Court, Administrative Judgment No. 176 (2023) Qing 01 Xing Zhong.

intent. Instead, it adopts an approach of 'conduct + consequence + penalty,' meaning that administrative penalties for tax evasion are based on objective imputation rather than the taxpayer's subjective intent. As long as the taxpayer employs methods prescribed in tax laws to evade tax, resulting in non-payment or underpayment of tax, the conduct can be deemed tax evasion regardless of the taxpayer's intent."

In my opinion, Article 63, Paragraph 1 of the Tax Administration Law of People's Republic of China (2015 Amendment) (hereinafter referred to as the "Tax Administration Law") establishes intent as a necessary element of tax evasion.

### **1. Interpretation of "Tax Evasion" Under Article 63 of the Tax Administration Law**

Article 63 of the Tax Administration Law states: "A taxpayer who fabricates, falsifies, conceals, or arbitrarily destroys accounting books or accounting vouchers, or overstates expenses or omits or understates income in accounting books, or refuses to file tax returns or files false tax returns after being notified by the tax authority, thereby failing to pay or underpaying tax, is guilty of tax evasion."

The term "evasion" inherently implies intent.

Article 63 lists three categories of tax evasion: (i) Acts related to accounting books and vouchers; (ii) Acts related to accounting recognition and measurement (recording of expenses and income in accounting books); (iii) Acts related to tax filing.

#### **(i) Acts Related to Accounting Books and Vouchers**

The terms "fabricate," "falsify," "conceal," and "arbitrarily destroy" inherently suggest intent.

#### **(ii) Acts Related to Accounting Recognition and Measurement**

The terms "overstating expenses" or "omitting or understating income" do not directly indicate intent. To be deemed "tax evasion," such acts must be committed with the intent of "failing to pay or underpaying tax" and must result in such an outcome.

"Overstating expenses" or "omitting or understating income" may occur due to accounting errors or differing interpretations of accounting policies. According to Accounting

Standard for Business Enterprises No. 28—Changes in Accounting Policies, Accounting Estimates, and Error Corrections, accounting errors themselves do not constitute violations and can be corrected. Therefore, only instances where "overstating expenses" or "omitting or understating income" are carried out with the intent to "evade or underpay tax" should be considered tax evasion.

### **(iii) Acts Related to Tax Filing**

"Refusal to file tax returns after being notified by the tax authority" depends on whether the tax authority has indeed issued a notification, as a refusal can only occur after a notification.

In many administrative disputes, tax authorities and courts refer to judicial interpretations such as the Supreme People's Court's Interpretation on Several Issues Concerning the Application of Law in the Trial of Criminal Cases of Tax Evasion and Tax Resistance (Interpretation [2002] No. 33) and the Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Application of Law in Handling Criminal Cases of Tax Administration Violations (Interpretation [2024] No. 4) to determine that a taxpayer or withholding agent who has duly registered for tax or withholding obligations is deemed to have been notified by the tax authority.

"Filing false tax returns" implies intent, meaning the taxpayer knowingly submits false information on tax returns or knowingly uses false supporting documents to file returns, with the objective of "evading or underpaying tax." If a taxpayer merely makes a reporting error due to negligence or if discrepancies arise from differing interpretations, leading to inconsistencies between the taxpayer's declaration and the content recognized by the tax authority, such conduct should not be classified as intentional tax evasion.

In the case of Liaocheng Longchang Investment Co., Ltd. v. Liaocheng Tax Bureau,<sup>2</sup> both the first-instance and appellate courts held that for tax evasion via false tax declarations, intent must be established, meaning that the taxpayer must have knowingly caused a tax loss

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<sup>2</sup> First Inspection Bureau of Liao City Tax Bureau, State Taxation Administration v. Liaocheng Longchang Investment Co., Ltd. – Tax Administrative Management (Taxation) Case, Liaocheng Intermediate People's Court, Administrative Judgment No. 277 (2019) Lu 15 Xing Zhong.

to the state and actively pursued this harmful outcome. Objectively, the taxpayer must have engaged in submitting false applications and fabricating supporting materials.

## **2. The State Taxation Administration's Official Responses**

In the State Taxation Administration's reply to the Hohhot Changlong Food Co., Ltd. case (Guo Shui Ban Han [2007] No. 513), it was stated that "The Tax Administration Law does not explicitly define the nature of self-corrected underpaid taxes. In handling such cases, the determination of tax evasion should still follow the requirement that tax evasion entails intent, specific means, and consequences. If a taxpayer voluntarily corrects an underpayment before a tax audit, such self-correction constitutes a supplementary declaration and payment of tax rather than evidence of intent to evade tax. Accordingly, it should not be classified as tax evasion."

Although this reply pertained to a specific case, I believe its criteria for tax evasion should be universally applicable: intent + specific means + consequences.

Some argue that, according to Article 4 of the Provisional Regulations on Individual Tax Case Replies (Guo Shui Fa [2012] No. 14), a tax case reply applicable on a general scale should be issued as a normative tax document. Since Guo Shui Ban Han [2007] No. 513 was an individual case response, its description of tax evasion elements should not be broadly applied. However, this viewpoint is debatable. First, the particularity of that case lies in "self-correction of underpaid tax," not in the elements of tax evasion. Second, if the intent element was required in that case to determine tax evasion, why should it not be required in other cases? Would applying different standards contradict the principle of fairness?

Subsequently, the State Taxation Administration's reply regarding the Beijing Julingyan Plastic Co., Ltd. case (Shui Zong Han [2016] No. 274) reaffirmed that the absence of intent precludes a finding of tax evasion.

In practice, in the case of Zhejiang Guanghong Real Estate Development Co., Ltd. v. Hangzhou Tax Bureau, <sup>3</sup> the Zhejiang High People's Court (as the reviewing court) held that

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<sup>3</sup> Zhejiang Guanghong Real Estate Development Co., Ltd. v. Hangzhou Tax Bureau Inspection Bureau, State Taxation Administration – Tax Administrative Management (Taxation) Case, Zhejiang High People's Court, Administrative Judgment No. 44 (2020) Zhe Xing Zai.

tax bureau assertions that tax laws do not emphasize intent contradict multiple official replies, including Shui Zong Han [2013] No. 196 and Shui Zong Han [2016] No. 274, which consistently recognize intent as a necessary element of tax evasion.

The reasonableness and legality of tax administrative penalties directly impact taxpayers' rights and interests. In administrative enforcement, considering taxpayers' subjective intent is a fundamental requirement of tax law principles.<sup>4</sup> The determination of "tax evasion" not only affects administrative penalties but may also relate to the crime of tax evasion under the Criminal Law of the People's Republic of China. Therefore, incorporating intent as a constituent element of tax evasion is essential.

## **(B) Does the Tax Authority Bear the Burden of Proof Regarding the Taxpayer's Intentional Tax Evasion?**

There has been ongoing debate over whether the tax authority must collect evidence proving a taxpayer's subjective intent when determining tax evasion. Some argue that "the tax authority only needs to establish that the taxpayer engaged in conduct specified under the Tax Collection and Administration Law and that such conduct resulted in the corresponding consequences. Whether the taxpayer possessed an intent to evade taxes is not within the tax authority's burden of proof. If the taxpayer fails to prove the absence of subjective fault, the tax authority may impose penalties for tax evasion."<sup>5</sup> Others contend that the principle of presumption of fault may be applied in determining subjective fault in unlawful conduct. However, the author believes that this principle should not be applied to subjective intent. The mere fact that a taxpayer engaged in unlawful conduct resulting in adverse consequences does not automatically imply an intent; rather, such intent must be substantiated with relevant evidence.<sup>6</sup>

The author maintains that the elements of tax evasion dictate that the tax authority bears the burden of proving the taxpayer's intentional pursuit of "non-payment or underpayment of

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<sup>4</sup> Wu Jie, "Study on the Burden of Proof for Taxpayers' Subjective Intent in Tax Evasion—A Case Analysis of 'Beijing Oil Sales Co., Ltd.'," published in Legal Exposition, 2023, Issue 30, pp. 21-23.

<sup>5</sup> Zhai Jiguang & Zhao Defang, "No Tax Administrative Penalty Without Subjective Fault? Industry Experts Weigh In," published on the WeChat public account China Taxation News, February 2, 2021.

<sup>6</sup> Wang Jiaben, "Jiaben on Cases: Determining Subjective Intent in Tax Evasion—The Lawsuit of Company J Against a Tax Treatment Decision," published in Certified Tax Agents, 2022, Issue 1, pp. 25-30.

taxes."

## 1. Legal Provisions

Pursuant to the following legal provisions, when subjective intent constitutes an element of tax evasion, the tax authority must prove the taxpayer's deliberate intention to "e evade or underpay the due taxes":

- (1) Article 53 of the Tax Administrative Reconsideration Rules (2018 Amendment) stipulates that "in administrative reconsideration, the respondent bears the burden of proof for the specific administrative act it has undertaken."
- (2) Article 44(1) of the Administrative Reconsideration Law of the People's Republic of China (2023 Amendment) states that "the respondent bears the burden of proof regarding the legality and appropriateness of the administrative act it has undertaken."
- (3) Article 34(1) of the Administrative Litigation Law of the People's Republic of China (2017 Amendment) provides that "the defendant bears the burden of proof for the administrative act it has undertaken and must present the evidence and normative documents on which the administrative act is based." Furthermore, Article 37 states that "the plaintiff may present evidence to prove the illegality of the administrative act. If the plaintiff's evidence is deemed insufficient, the defendant is not exempt from its burden of proof."

In practice, in the case of Zhejiang Guanghong Real Estate Development Co., Ltd. v. Hangzhou Tax Bureau of the State Taxation Administration,<sup>7</sup> the Zhejiang Higher People's Court (acting as the court of retrial) held that "since administrative agencies bear the burden of proving the legality of their actions in administrative litigation, tax authorities must investigate and establish a taxpayer's intent in cases of nonpayment or underpayment of taxes when determining and addressing tax evasion. Accordingly, they are also responsible for providing evidence of such intent in administrative litigation."

Additionally, Article 33(2) of the Administrative Penalty Law of the People's Republic of

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<sup>7</sup> Zhejiang Guanghong Real Estate Development Co., Ltd. v. Hangzhou Tax Bureau Inspection Bureau, State Taxation Administration – Tax Administrative Management (Taxation) Case, Zhejiang High People's Court, Administrative Judgment No. 44 (2020) Zhe Xing Zai.

China (2021 Amendment) states that "if the party concerned presents evidence sufficient to prove the absence of subjective fault, no administrative penalty shall be imposed, except as otherwise provided by laws and administrative regulations." This provision establishes the principle of presumption of fault in administrative penalties by shifting the burden of proof. However, subjective faults encompass both intent and negligence. The author agrees with the view that intent should not be presumed under the principle of presumption of fault, meaning that the tax authority must investigate and collect evidence proving the taxpayer's subjective intent to evade taxes.

## **2. Responses from the State Taxation Administration**

In the Reply of the State Taxation Administration on Whether Correction and Payment of Taxes During Tax Inspection Affects the Determination of Tax Evasion (Shuizonghan [2013] No. 196), it is stated that "if a taxpayer voluntarily corrects its declaration and pays the tax before a tax inspection by the tax authority's audit bureau, and if the tax authority lacks evidence proving the taxpayer's subjective intent to evade taxes, the case shall not be treated as tax evasion."

Similarly, in the Reply of the State Taxation Administration on the Review Opinion of the Tax Evasion Case of Beijing Julingyan Plastic Co., Ltd. (Shuizonghan [2016] No. 274), it is stated that "from an evidentiary perspective, the enterprise cannot be determined to have had subjective intent to evade taxes."

Both replies underscore that, when making a determination of tax evasion, the tax authority must possess corresponding evidence proving the taxpayer's subjective intent.

## **Case Commentary | Can a Court-Confirmed Property Ownership Qualify for Tax Exemptions?**

*By Clara Yang, Partner, ForTran Law Firm*

Recently, the author handled a case involving the confirmation of real property ownership

through litigation, triggered by a developer's bankruptcy. In 1995, the purchaser signed a Commercial Housing Sales Contract with a developer in Shanghai to purchase a property for approximately RMB 100,000. The purchaser paid the full purchase price and took possession of the property. However, due to the developer's business license being revoked and subsequent bankruptcy, the property title was never formally transferred. As of 2024, title registration remained outstanding.

Intending to sell the property, the purchaser engaged the author to obtain legal ownership through litigation. In late 2024, the court ruled in favor of the purchaser, ordering the developer to assist in completing the real property registration. In January 2025, with the author's assistance, the purchaser and the developer completed the registration at the real estate registration center. The purchaser paid deed tax and received a property ownership certificate.

The purchaser then inquired whether the sale of the property to a non-lineal relative could be exempt from individual income tax (IIT) and value-added tax (VAT).

Under current Chinese tax policy, VAT may be reduced or exempted for individuals selling residential properties held for at least two years (previously, business tax applied). For IIT, sales of self-used residential properties held for over five years and serving as the family's only residence are exempt.

Specifically:

- ◆ IIT: According to Circular Cai Shui Zi [1999] No. 278, Article 4, income derived from the sale of a self-used residential property that has been held for more than five years and is the sole residence of the household is exempt from individual income tax.
- ◆ VAT: Pursuant to Circular Cai Shui [2016] No. 36 and its Annex 3 on transitional policies for the VAT reform, individuals selling properties held for less than two years must pay VAT at a 5% rate on the total sales price. Properties held for two years or more are exempt from VAT. In Beijing, Shanghai, Guangzhou, and Shenzhen:
  - Sales of non-ordinary housing held for at least two years are subject to VAT on the margin (sales price minus purchase price) at 5%.

- Sales of ordinary housing held for at least two years are exempt from VAT.

On November 12, 2024, the Ministry of Finance and two other agencies issued a new announcement clarifying that if cities such as Beijing, Shanghai, Guangzhou, and Shenzhen eliminate the distinction between ordinary and non-ordinary housing, a unified national policy will apply. As such, all residential properties held for two years or more are VAT-exempt.

On November 18, 2024, the Shanghai Municipal Housing and Urban-Rural Development Commission announced the cancellation of the ordinary/non-ordinary housing classification.

Therefore, to qualify for VAT exemption, the property must have been held for at least two years. For IIT exemption, the term "self-used for over five years" has been interpreted by the State Taxation Administration (STA) in Circular Guo Shui Fa [2007] No. 33 as referring to the time elapsed from the purchase to the transfer, rather than actual usage. Thus, the "holding period" is crucial to determining eligibility for exemption.

In the purchaser's view, having lived in the property for nearly 20 years satisfies the requirements. However, regulatory interpretation of "holding period" may differ. Since 2005, China has implemented integrated tax administration for real estate, applying a "certificate-first, tax-later" policy. The STA assesses tax benefits based on the earlier of two dates: the issuance date of the deed tax payment certificate or the property ownership certificate.

This principle is found in:

- Circular Guo Shui Fa [2005] No. 89, which defines the purchase date as the earlier of the dates on the deed tax certificate or the property title.
- Circular Guo Shui Fa [2005] No. 172, which further confirms this "whichever is earlier" principle.
- Circular Guo Shui Fa [2007] No. 33:
  - For public housing purchased under housing reform, the purchase date is determined based on the effective date of the purchase contract, the issuance date of the receipt, or the date on the ownership certificate, whichever is earlier.

- For other housing, the purchase date is determined by the earlier of the dates on the ownership certificate or deed tax payment certificate.
- The date of transfer is the date on the sales invoice.

Accordingly, the period between the determined purchase date and the date of sale forms the basis for evaluating eligibility for tax exemptions.

To address cases where title certificates could not be obtained in time due to ownership disputes, the STA issued Announcement No. 8 [2017], stating that if a legally effective court judgment or arbitral award confirms the purchase, the effective date of that legal document shall be deemed the purchase date.

Because tax exemption policies for housing transfers are preferential in nature, eligibility is governed strictly by normative documents issued by the Ministry of Finance and the STA with State Council approval. The key condition for exemption is the holding period, which must be determined based on formal guidance. This ensures policy continuity and promotes taxpayer compliance, while preventing inconsistent standards that could undermine tax administration.

Returning to the present case, although the purchaser had occupied the property for years, ownership registration had not occurred until the court judgment and subsequent registration in 2024–2025. The court also emphasized that the purchaser's claim was contractual (performance of agreement) rather than proprietary (asserting ownership), as real property rights arise only upon registration. Under the principle distinguishing property rights from contractual rights, prior to registration, the purchaser only held a contractual right to compel the developer to register the title but did not own the property in legal terms.

Therefore, only after completing registration in early 2025 and obtaining the deed tax certificate could the purchaser be considered to have "purchased" the property for tax purposes. As such, the property holding period would not meet the required thresholds of five years for IIT exemption or two years for VAT exemption. Consequently, the transaction would not qualify for the relevant tax exemptions.

# Regulatory Updates

## **Reply of the Supreme People's Court on the Standard for Calculating Interest on Overdue Payments in Foreign Currencies and Hong Kong, Macao, and Taiwan Currencies (Fa Shi [2025] No.2)**

(Adopted at the 1933rd Meeting of the Adjudication Committee of the Supreme People's Court on November 25, 2024, and effective as of February 13, 2025)

To the High People's Courts of all provinces, autonomous regions, and municipalities directly under the Central Government; the Military Court of the People's Liberation Army; and the Production and Construction Corps Branch of the Xinjiang Uygur Autonomous Region High People's Court:

Recently, several high people's courts have submitted requests for instructions on determining the applicable interest rates for calculating losses due to overdue payments in foreign currencies and Hong Kong, Macao, and Taiwan currencies. Upon deliberation, the reply is as follows:

### **Article 1**

Where a party claims interest losses due to overdue payments in foreign currencies and the parties have agreed on the applicable interest rate, such an agreement shall be followed.

However, if the agreed interest rate exceeds the upper limit prescribed by the governing law applicable to the dispute, the excess portion shall not be upheld.

### **Article 2**

Where the parties have not agreed on an interest rate or the agreement is unclear, the interest rate for overdue payments shall be determined as follows:

- 1. For overdue payments in U.S. dollars**, the interest rate may be determined based on the average loan rates for periods of up to 3 months, 3 (inclusive) to 6 months, 6 (inclusive) to 12 months, 1 year, and over 1 year, as published in the appendix of the China Monetary Policy Implementation Report regularly released on the official website of the People's Bank of China. The people's court shall determine the applicable rate based on the specific

circumstances of the case.

**2. For overdue payments in euros, British pounds, Japanese yen, Australian dollars, Swiss francs, Canadian dollars, New Zealand dollars, and Singapore dollars,** the interest rate may be determined by reference to the following benchmark rates, respectively:

- Euro Interbank Offered Rate (EURIBOR) for euros;
- Sterling Overnight Index Average (SONIA) for British pounds;
- Tokyo Overnight Average Rate (TONA) for Japanese yen;
- Bank Bill Swap Rate (BBSW) for Australian dollars;
- Swiss Average Rate Overnight (SARON) for Swiss francs;
- Canadian Overnight Repo Rate Average (CORRA) for Canadian dollars;
- Bank Bill Benchmark Rate (BKBM) for New Zealand dollars; and
- Singapore Overnight Rate Average (SORA) for Singapore dollars.

**3. For other foreign currencies,** the interest rate may be determined by reference to the benchmark interest rates published on the official websites of the central banks of the respective countries.

### **Article 3**

For overdue payments in Hong Kong dollars, Macao patacas, and New Taiwan dollars, where the parties have agreed on an interest rate, the provisions of Article 1 of this Reply shall apply. Where no agreement has been made or the agreement is unclear, the interest rate may be determined by reference to the following:

- Hong Kong Interbank Offered Rate (HIBOR) for Hong Kong dollars;
- Macao Pataca Composite Interest Rate for Macao patacas; and
- New Taiwan Dollar Prime Lending Rate for New Taiwan dollars.

# **Administrative Measures for the Final Settlement and Payment of Consolidated Individual Income Tax (Decree No. 57 of the State Taxation Administration)**

## **Chapter I General Provisions**

### **Article 1**

These Measures are formulated to protect taxpayers' legitimate rights and interests and to regulate the final settlement and payment of consolidated individual income tax in accordance with the Individual Income Tax Law of the People's Republic of China and its implementing regulations (collectively referred to as the Individual Income Tax Law), as well as the Law of the People's Republic of China on the Administration of Tax Collection and its implementing rules (collectively referred to as the Tax Collection and Administration Law).

### **Article 2**

Taxpayers who receive consolidated income shall calculate their individual income tax on an annual basis and complete the final settlement and payment in accordance with the law.

### **Article 3**

For the purposes of these Measures, "consolidated income" refers to income derived from wages and salaries, remuneration for labor services, author's remuneration, and royalties.

The term "final settlement and payment" refers to the process whereby a taxpayer consolidates the total amount of income received from the above sources during a tax year, deducts CNY 60,000 as expenses, as well as special deductions, additional special deductions, other legally determined deductions, and qualified donations to public welfare and charitable causes. The applicable tax rate for consolidated income is then applied, and the corresponding quick deduction amount and tax reduction or exemption amount are deducted to calculate the actual tax payable for the year. After subtracting the prepaid tax amount, the taxpayer determines the tax refund or additional tax payment due for that tax year and completes the tax declaration and settlement with the tax authorities within the statutory time limit. The specific calculation formula is as follows:

Tax Refund or Additional Payment=[(Consolidated Income-60,000-Special Deductions-Additional Special Deductions-Other Legal Deductions-Qualified Public Welfare Donations)×Ap

licable Tax Rate—Quick Deduction]—Tax Reduction or Exemption—Prepaid Tax

Taxpayers who receive income from overseas sources shall file their tax returns in accordance with the relevant regulations.

#### **Article 4**

Taxpayers shall determine the tax year to which their consolidated income belongs based on the actual time of receipt.

If the tax year of an overseas income source does not align with the calendar year, the overseas tax year shall be deemed to correspond to the Chinese tax year in which its last day falls.

#### **Article 5**

Taxpayers shall complete the final settlement and payment of consolidated income tax between March 1 and June 30 of the year following the tax year.

Taxpayers without domicile in China who depart the country before the commencement of the final settlement and payment period may complete the process before leaving China.

#### **Article 6**

Taxpayers who have prepaid individual income tax on their consolidated income in accordance with the law are exempt from the final settlement and payment if they meet any of the following conditions:

1. The final settlement results in additional tax payable, but the total annual consolidated income does not exceed the prescribed amount;
2. The final settlement results in additional tax payable, but the amount due does not exceed the prescribed threshold;
3. The prepaid tax amount equals the actual tax payable as determined in the final settlement;
4. The taxpayer qualifies for a tax refund but chooses not to apply for it.

#### **Article 7**

Taxpayers who have received consolidated income shall complete the final settlement and payment if they meet any of the following conditions:

1. The prepaid tax amount exceeds the actual tax payable as determined in the final settlement, and the taxpayer applies for a tax refund;
2. The prepaid tax amount is less than the actual tax payable as determined in the final settlement, and the taxpayer does not fall under the exemption conditions specified in Article 6;
3. The taxpayer has underreported or failed to report consolidated income due to incorrect classification of income, failure of a withholding agent to fulfill its tax withholding obligations, or the absence of a withholding agent for the income received.

## **Chapter II: Preparation for Annual Reconciliation and Reporting of Relevant Information**

### **Article 8**

Before conducting the annual reconciliation, taxpayers shall verify the validity of their registered contact information, bank accounts, and other basic information. They shall also review and confirm their comprehensive income, relevant deductions, and prepaid tax amounts via the Individual Income Tax App (hereinafter referred to as the “IIT App”), the website of the Natural Person Electronic Tax Bureau (hereinafter referred to as the “website”), or through their withholding agents.

### **Article 9**

During the annual reconciliation, taxpayers may declare or supplement the following deductions:

1. A standard deduction of RMB 60,000;
2. Special deductions, including qualifying contributions to basic pension insurance, basic medical insurance, unemployment insurance, and housing provident funds;
3. Special additional deductions for eligible expenses, including infant care for children under three years old, children's education, continuing education, major medical expenses, mortgage interest or rental payments, and elderly support;
4. Other eligible deductions, including enterprise annuities, occupational annuities,

commercial health insurance, and personal pensions;

5. Qualified donations to public welfare and charitable causes.

Taxpayers declaring deductions under items (2) to (5) of this Article shall retain or provide relevant supporting documents as required.

### **Article 10**

Taxpayers who earn both comprehensive income and business income may apply the RMB 60,000 standard deduction, special deductions, special additional deductions, and other legally prescribed deductions to either category of income but shall not claim the same deduction twice.

### **Article 11**

Taxpayers' declared special additional deductions shall comply with the Individual Income Tax Law and relevant national regulations.

When taxpayers and other eligible filers jointly claim deductions for infant care for children under three years old, children's education, major medical expenses, mortgage interest or rental payments, or elderly support, they shall confirm the deduction amounts within the allowable limits.

### **Article 12**

Taxpayers intending to benefit from tax reduction, exemption, or other preferential tax policies shall thoroughly understand the relevant regulations and ensure they meet the eligibility criteria before declaring such benefits.

### **Article 13**

If taxpayers dispute the comprehensive income information reported by their withholding agents, they shall first verify the information with the withholding agents. If the information is incorrect and the withholding agent refuses to rectify it, or if the taxpayer's identity has been misused and they are unable to contact the withholding agent, the taxpayer may submit an appeal to the tax authorities via the IIT App, the website, or other designated channels.

## **Chapter III: Handling and Services for Annual Reconciliation**

## **Article 14**

Taxpayers may choose one of the following methods to handle the annual reconciliation:

1. Self-handle the process;
2. Have their employer (including entities that withhold and prepay individual income tax on labor remuneration using the cumulative withholding method, hereinafter referred to as "entities") handle the process on their behalf. Upon request from the taxpayer, the unit shall handle the process or provide training and guidance to help the taxpayer complete the declaration and tax refund (or payment). If the unit handles the reconciliation on behalf of the taxpayer, the taxpayer must confirm this arrangement with the unit in writing or electronically. If the taxpayer does not provide confirmation, the unit shall not handle the reconciliation on their behalf;
3. Entrust a tax-related professional service agency or other entities or individuals to handle the reconciliation. When entrusting a third party, the taxpayer must sign an authorization letter with the entrusted party.

## **Article 15**

Taxpayers are encouraged to handle their annual reconciliation through the IIT App or website but may also choose to mail their documents or visit the tax service center. For those choosing to use the mailing method, the taxpayer must send the declaration forms to the address announced by the tax bureau of the province, autonomous region, directly governed municipality, or specially designated city where the taxpayer's tax authority is located.

## **Article 16**

Taxpayers must ensure that the information they provide for the reconciliation is truthful, accurate, and complete.

When handled by a unit or an entrusted third party, the taxpayer must truthfully provide all relevant information for the tax year, including comprehensive income, relevant deductions, and any tax incentives enjoyed.

The taxpayer and the unit handling the reconciliation on their behalf must retain all information about comprehensive income, deductions, and tax benefits for a period of five

years after the conclusion of the reconciliation period.

### **Article 17**

Entities or entrusted parties that handle the annual reconciliation on behalf of taxpayers must promptly notify the taxpayer of the reconciliation status. If the taxpayer finds any errors in the reconciliation, they may request the unit or entrusted party to correct the declaration or may make the correction themselves.

### **Article 18**

During the reconciliation period, taxpayers who handle the process themselves or entrust a third party to do so must file with the tax authority of their employer. If the taxpayer has two or more employers, they may choose to file with the tax authority of one of them.

If the reconciliation is handled by the employer, the filing will be made to the tax authority of the employer.

If the taxpayer has no employer, they must file with the tax authority of their primary income source, household registration location, or habitual residence. The primary income source refers to the location where the taxpayer's largest cumulative labor remuneration, manuscript fees, and royalties are paid during the tax year.

After the conclusion of the reconciliation period, the tax authority will determine the tax authority responsible for taxpayers who have not completed the reconciliation.

Except for special provisions, the designated tax authority for a taxpayer's annual reconciliation cannot be changed once it has been determined.

### **Article 19**

The tax authority, via the IIT App and website, will provide pre-filled items on the declaration forms to assist taxpayers in completing the reconciliation process conveniently.

The tax authority will also provide policy explanations and operational guidance for the reconciliation process and offer tax-related consultations through the IIT App, website, 12366 hotline, and other channels.

For special groups facing difficulties in completing the reconciliation independently, they may apply for personalized convenience services from the tax authority.

## **Article 20**

The tax authority will offer appointment services during the initial stage of the reconciliation.

Taxpayers requiring assistance may make an appointment through the IIT App.

The tax authority and entities will provide reminders and guidance in stages, urging taxpayers to complete the reconciliation within the designated time periods.

## **Article 21**

If taxpayers are unable to complete the reconciliation on time and require an extension, they must apply for the extension before the reconciliation period ends. Upon approval by the tax authority, the taxpayer may extend the reconciliation period. However, they must prepay taxes according to the tax amount actually paid in the previous reconciliation period or the tax amount determined by the tax authority, and complete the reconciliation within the approved extension period.

# **Chapter IV: Tax Refunds (or Supplementary Tax Payments)**

## **Article 22**

Taxpayers who complete the annual reconciliation in accordance with the law and find that their actual tax liability is less than the tax paid in advance may apply for a tax refund.

Taxpayers who need to make supplementary tax payments during the annual reconciliation period must pay the taxes before the end of the reconciliation period.

## **Article 23**

Taxpayers with a total income of less than 60,000 yuan and who have already paid individual income tax may apply for a simplified tax refund process via the IIT App or website during the annual reconciliation period.

Taxpayers who meet the criteria for tax refunds and face significant financial burdens will receive priority refund services from the tax authority.

## **Article 24**

After taxpayers submit an application for a tax refund, the tax authority will conduct a review in accordance with the law.

If the tax authority finds that the refund application does not comply with the regulations, it must notify the taxpayer to provide additional information or correct the annual reconciliation declaration. If the taxpayer refuses to provide the necessary information or refuses to correct the declaration, the tax authority will not process the refund.

### **Article 25**

Taxpayers applying for annual reconciliation tax refunds or other tax refunds must first complete the outstanding tax payment for previous years, amend their tax returns, or submit the required documents if they fall under any of the following circumstances:

1. Failure to complete supplementary tax payments for previous years in accordance with the law
2. Failure to amend the tax return or provide supporting documents after being notified by the tax authorities of discrepancies in the annual reconciliation for previous years.

### **Article 26**

Taxpayers applying for a tax refund must provide a qualified bank account in China. After the tax authority reviews the provided information in accordance with the regulations, the refund will be processed.

If the taxpayer fails to provide a valid bank account or provides incorrect account information, they must correct the information and reapply for the refund in accordance with the regulations.

### **Article 27**

Taxpayers making supplementary tax payments for the annual reconciliation can pay through online banking, tax service centers, bank counters, non-bank payment institutions, and other available channels.

For those who choose to handle supplementary tax payments by mail, taxpayers should confirm the reconciliation progress through the IIT App, website, or their tax authority and ensure timely payment of the taxes.

## **Chapter V: Management Measures and Legal Liabilities**

## **Article 28**

After the annual reconciliation period ends, if a taxpayer has failed to file supplementary tax payments or pay the full amount of taxes, the tax authority will recover the unpaid or underpaid taxes in accordance with the law, impose late payment penalties, and mark the taxpayer's individual income tax record. Once the taxpayer corrects their failure to file or pay taxes, the tax authority must promptly remove the mark.

## **Article 29**

If a taxpayer has overpaid or underpaid taxes due to errors in their tax declaration information and voluntarily corrects the error or corrects it after being reminded by the tax authority, the tax authority may waive penalties according to the principle of "no penalty for first-time violations."

## **Article 30**

If a taxpayer fails to file tax declarations as required, does not pay or underpays taxes, submits false tax declarations, does not cooperate with tax audits, or makes false promises, they will be included in the credit information system. In cases of serious dishonesty, the taxpayer will be subject to restrictions as per relevant regulations.

## **Article 31**

If an entity fails to handle the taxpayer's annual reconciliation on behalf of taxpayers as required or fraudulently uses the a taxpayer's identity to file withholding declarations or annual reconciliations, it shall be dealt with according to relevant regulations and included in the business tax credit evaluation.

If the legal representative of an enterprise, an individual partner of a partnership, or an individual investor in a sole proprietorship fail to complete the annual reconciliation as required by law, such non-compliance shall be jointly included in the business tax credit evaluation.

## **Article 32**

If a trustee assists a taxpayer in submitting false declarations, fraudulently obtaining tax refunds, or engaging in other tax violations related to the annual reconciliation, they will be

dealt with in accordance with tax administration laws and regulations governing tax-related professional services, and will be included in the tax-related professional services credit evaluation system.

### **Article 33**

After the annual reconciliation period ends, if a taxpayer has failed to file supplementary tax payments or pay the full amount of taxes, the tax authority will order them to correct the situation within a specified period and send relevant documents. If the taxpayer fails to make the correction within the given timeframe, the tax authority may impose penalties in accordance with tax administration laws. In cases of serious violations, the matter may be publicly exposed.

### **Article 34**

The tax authority, the employer handling the reconciliation on behalf of the taxpayer, and the trustee must keep the taxpayer's tax-related information confidential in accordance with the law.

### **Article 35**

If the tax authority or its employees violate laws, regulations, or other provisions and infringe upon the legitimate rights of the taxpayer, the taxpayer may file complaints, reports, apply for administrative review, or file an administrative lawsuit in accordance with the law.

## **Chapter VI: Supplementary Provisions**

### **Article 36**

Income derived by taxpayers from property leasing as well as income that is not included in comprehensive income for tax calculation according to regulations, shall not be subject to these measures.

The provisions of these measures do not apply to income derived by non-resident individuals from wages and salaries, service income, remuneration for manuscript fees, or royalties.

### **Article 37**

These measures shall take effect from the date of publication.

## Fortran Update

1. In February 2025, Ryan Yan was invited to deliver a lecture to master's students in taxation at Fudan University. The course, titled Principles of Tax Law and Corporate Tax Compliance Practices, covered key legal concepts and practical compliance strategies for businesses.
2. On February 13, 2025, Lawyer Ivy Yang's team assisted Shanghai Linfang Equity Investment Management Co., Ltd. in establishing a specialized fund for disruptive technologies. The fund successfully completed its registration with the Asset Management Association of China (AMAC).
3. On February 24, 2025, Shanghai ForTran Law Firm relocated its office to the 15th floor of Vanke Center Riverside, located at 118 Minsheng Road, Pudong New Area, Shanghai.