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Note: Paragraph 2 of Article 41 is repealed. Refer to: "State Administration of Taxation Announcement on the Catalog of Tax Normative Documents Wholly Invalidated, Repealed, or Partially Invalidated" (State Administration of Taxation Announcement 2018 No. 33).



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In order to thoroughly implement the “Deepening the Reform of State and Local Tax Collection and Administration System Plan”, further improve the work on special tax investigation adjustments and mutual agreement procedures, actively apply the achievements of the Base Erosion and Profit Shifting (BEPS) Action Plan, and effectively implement the agreements or arrangements for the avoidance of double taxation concluded by China, and in accordance with the relevant provisions of the “Enterprise Income Tax Law of the People’s Republic of China” and its implementation regulations, the “Tax Collection and Administration Law of the People’s Republic of China” and its implementation rules, the State Administration of Taxation has formulated the “Measures for Special Tax Investigation Adjustments and Mutual Agreement Procedures”, which are hereby promulgated and shall take effect from May 1, 2017.

This is hereby announced.

Attachments:

1. Form for Self-Payment of Tax under Special Tax Adjustment
2. Confirmation Form for Related Party Relationships
3. Confirmation Form for Related Party Transactions
4. Notice of Conclusion of Special Tax Investigation
5. Record of Negotiation Content
6. Preliminary Notice of Special Tax Investigation Adjustment
7. Notice of Special Tax Investigation Adjustment
8. Application Form for Initiating Mutual Agreement Procedures for Special Tax Adjustment
9. Notice of Additional (Refund) Tax Payment under Mutual Agreement for Special Tax Adjustment

State Administration of Taxation
March 17, 2017

Measures for Special Tax Investigation Adjustments and Mutual Agreement Procedures

Article 1

These Measures are formulated in accordance with the relevant provisions of the “Enterprise Income

Tax Law of the People’s Republic of China” (hereinafter referred to as the Enterprise Income Tax Law) and its implementation regulations, the “Tax Collection and Administration Law of the People’s Republic of China” (hereinafter referred to as the Tax Collection and Administration Law) and its implementation rules, as well as the agreements or arrangements for the avoidance of double taxation concluded by China (hereinafter referred to as tax treaties).

Article 2

Tax authorities shall adopt a risk management-oriented approach, construct and improve the monitoring and management index system for the profit levels of related party transactions, strengthen the monitoring of enterprise profit levels, and promote tax compliance by enterprises through special tax adjustment monitoring management and special tax investigation adjustments.

Article 3

Tax authorities shall implement special tax adjustment monitoring management on enterprises through means such as related party reporting review, contemporaneous documentation management, and profit level monitoring. If an enterprise is found to have special tax adjustment risks, the tax authority may serve the enterprise with a “Notice of Tax Matters” to inform it of the tax risks.

If an enterprise receives a special tax adjustment risk reminder or discovers that it has special tax adjustment risks, it may make self-adjustments and pay additional tax. An enterprise making self-adjustments and paying additional tax shall fill out the “Form for Self-Payment of Tax under Special Tax Adjustment”.

If an enterprise makes self-adjustments and pays additional tax, the tax authority may still conduct special tax investigation adjustments in accordance with relevant provisions.

If an enterprise requests the tax authority to confirm special tax adjustment matters such as the pricing principles and methods for related party transactions, the tax authority shall initiate special tax investigation procedures.

Article 4

When conducting special tax investigations, tax authorities shall focus on enterprises with the following risk characteristics:

1. Large amounts or multiple types of related party transactions;
2. Long-term losses, marginal profits, or volatile profitability;
3. Profit levels below industry averages;
4. Profit levels inconsistent with the functions performed and risks assumed, or benefits shared inconsistent with costs allocated;
5. Related party transactions with related parties in low-tax jurisdictions;
6. Failure to file related party reports or prepare contemporaneous documentation as required;
7. Debt-to-equity ratio from related parties exceeding prescribed standards;
8. An enterprise established in a jurisdiction with an effective tax rate below 12.5% that is controlled by a resident enterprise, or by a resident enterprise and Chinese residents, and that does not distribute or reduce profit distribution without reasonable business needs;
9. Implementation of other tax planning or arrangements without reasonable commercial purpose.

Article 5

The tax authority shall serve the enterprise that has been determined for investigation with the “Notice of Tax Inspection (I)”. If the enterprise under investigation is a non-resident enterprise, the tax authority may entrust a domestic related party or a domestic enterprise related to the investigation to serve the “Notice of Tax Inspection (I)”.

An enterprise that has reached a consensus with the tax authority through pre-filing meetings, has submitted the “Letter of Intent for Advance Pricing Arrangement Negotiation” to the tax authority, and applied for retrospective application of the advance pricing arrangement to previous years, or an enterprise that has submitted the “Application for Renewal of Advance Pricing Arrangement” to the tax authority, may be temporarily excluded as a target for special tax adjustment investigation. This does not apply to years and transactions not covered by the advance pricing arrangement.

Article 6

When conducting special tax investigations, tax authorities may require the enterprise under investigation and its related parties, or other enterprises related to the investigation, to provide relevant information:

1. If requiring the enterprise under investigation and its related parties, or other enterprises related to the investigation, to provide relevant information, the tax authority shall serve the enterprise with a “Notice of Tax Matters”. If the enterprise is overseas, the tax authority may entrust a domestic related party or a domestic enterprise related to the investigation to serve the “Notice of Tax Matters”;
2. If it is necessary to investigate and collect evidence from the related parties of the enterprise under investigation or other enterprises related to the investigation, the tax authority shall serve the enterprise with the “Notice of Tax Inspection (II)”.

Article 7

The enterprise under investigation, its related parties, and other enterprises related to the investigation shall provide true and complete relevant information as required by the tax authority:

1. Provide original documentary evidence kept by themselves. The original, official copy, and duplicate are all considered original documents. If it is truly difficult to provide the original, a copy, photograph, or excerpt that has been verified to be consistent with the original may be provided. The provider shall note on the copy, “Verified consistent with the original, the original is kept by us,” and shall sign and seal it;
2. If providing copies, photocopies, or transcripts of documentary evidence kept by relevant parties, the provider shall note on the copy, photocopy, or transcript, “Verified consistent with the original,” indicate the source, and have the relevant party and the provider sign and seal it;
3. If providing foreign-language documentary evidence or audiovisual materials, a Chinese translation shall be attached. The provider shall be responsible for the accuracy and completeness of the Chinese translation;
4. If providing information from overseas, the source shall be stated. If the tax authority doubts the authenticity and completeness of overseas information, it may require the enterprise to provide certification from a notary institution.

Article 8

When conducting special tax investigations, tax authorities shall act within their statutory au-

thority and procedures, and may adopt methods such as on-site investigation, inspection of paper or electronic data, retrieval of account books, inquiries, inquiry of deposit accounts or savings deposits, sending letters for cooperative investigation, international tax information exchange, and cross-regional cooperative investigation to collect evidence materials that can prove the facts of the case. During the evidence collection process, they may record, audio-record, video-record, photograph, and copy. Audio recording, video recording, and photography shall be notified to the party from whom evidence is collected. The content of records shall be signed by at least two investigators and confirmed by signature and seal after verification by the party from whom evidence is collected. If the party from whom evidence is collected refuses to sign, the tax authority investigators (at least two) shall note this.

Article 9

Where electronic data is used to prove the facts of a case, the tax authority may collect evidence in the following ways:

1. Require the provider to print the electronic data into paper materials, indicate the data source and printing location on the paper materials, and note "Verified consistent with the electronic data," and have the provider sign and seal it;
2. Fix the electronic data in tangible carrier form. The investigators and the designated personnel of the provider shall copy the electronic data to a read-only storage medium and seal it. The sealed packaging shall indicate the electronic data name, data source, production method, production time, producer, file format and size, etc., and note "Verified consistent with the electronic data recorded on the original carrier," and have the provider sign and seal it.

Article 10

If the tax authority needs to retrieve account books, accounting vouchers, financial accounting reports, and other relevant information from previous years for inspection, it shall, in accordance with the relevant provisions of the Tax Collection and Administration Law and its implementation rules, serve the enterprise under investigation with the "Notice for Retrieval of Account Books and Materials" and have it confirm and sign the "List of Retrieved Ac-

count Books and Materials" after verification. The retrieved materials shall be properly kept and returned intact within the statutory time limit.

Article 11

If the tax authority needs to use inquiry to collect evidence materials, it shall be conducted by at least two investigators, and an "Inquiry (Investigation) Transcript" shall be made.

Article 12

If a party under investigation or a witness is required to make a statement or provide testimony, they shall be informed in advance of the legal liability for not making truthful statements or providing false testimony. The party under investigation or witness may make a statement or provide testimony in writing or orally. If made orally, the investigators may transcribe, audio-record, or video-record it. The transcript shall be written with writing tools that can maintain the writing for a long time, or may be recorded and printed by computer. The statement or testimony shall be signed page by page by the party under investigation or witness.

The statement or testimony shall state basic information such as the name, work unit, and contact information of the party under investigation or witness, indicate the date of issuance, and attach identity verification materials such as a copy of the resident ID card.

If the party under investigation or witness orally requests to change the statement or testimony, the investigators shall remake the transcript for the changed part, indicate the reason, and have the party under investigation or witness sign each page. If the party under investigation or witness changes a written statement or testimony, the original shall not be returned.

Article 13

The tax authority shall, in conjunction with the annual related party transaction report form and relevant materials of the enterprise under investigation, confirm its related party relationships and the amounts of related party transactions, fill out the "Confirmation Form for Related Party Relationships" and the "Confirmation Form for Related Party Transactions," and have the enterprise under investigation confirm and sign. If the enterprise under investigation refuses to confirm, the tax authority investigators (at least two) shall note this.

Article 14

If the enterprise under investigation fails to provide special tax investigation-related information, or provides false or incomplete information, the tax authority shall order it to make corrections within a specified period. If it fails to make corrections upon expiration, the tax authority shall handle the matter in accordance with the relevant provisions of the Tax Collection and Administration Law and its implementation rules, and determine its taxable income according to law.

Article 15

When conducting transfer pricing investigations, tax authorities shall perform comparability analysis. Comparability analysis generally includes the following five aspects. The tax authority may select specific analysis content according to the circumstances of the case:

1. Characteristics of the transacted assets or services, including physical characteristics, quality, quantity, etc., of tangible assets; type, transaction form, degree of protection, duration, expected return, etc., of intangible assets; nature and content of services; characteristics, content, risk management, etc., of financial assets;
2. Functions performed, risks assumed, and assets used by the parties to the transaction. Functions include R&D, design, procurement, processing, assembly, manufacturing, maintenance, distribution, marketing, advertising, inventory management, logistics, warehousing, financing, management, finance, accounting, legal, and human resources management, etc.; risks include investment risk, R&D risk, procurement risk, production risk, market risk, management risk, and financial risk, etc.; assets include tangible assets, intangible assets, financial assets, etc.;
3. Contractual terms, including subject matter of the transaction, transaction quantity, transaction price, payment terms and conditions, delivery conditions, scope and conditions of after-sales service, agreement on providing additional services, rights to modify or change contract content, contract validity period, rights to terminate or renew the contract, etc. Contract term analysis shall focus on the enterprise's ability and behavior in performing the contract, and the credibility of contract terms between related parties;

4. Economic environment, including industry overview, geographical region, market size, market level, market share, degree of market competition, consumer purchasing power, substitutability of goods or services, factor prices, transportation costs, government regulation, and location-specific factors such as cost savings and market premiums;
5. Business strategies, including innovation and development, diversification, synergy effects, risk avoidance, and market occupation strategies, etc.

Article 16

On the basis of comparability analysis, the tax authority shall select a reasonable transfer pricing method to analyze and evaluate the enterprise's related party transactions. Transfer pricing methods include the comparable uncontrolled price method, resale price method, cost-plus method, transactional net margin method, profit split method, and other methods consistent with the arm's length principle.

Article 17

The comparable uncontrolled price method uses the price charged for the same or similar business activities between non-related parties as the arm's length price for the related party transaction. The comparable uncontrolled price method may be applied to all types of related party transactions. The comparability analysis for the comparable uncontrolled price method shall, according to different transaction types, particularly examine differences in the characteristics of the transacted assets or services, contractual terms, economic environment, and business strategies between related and non-related transactions:

1. Transfer of the right to use or ownership of tangible assets, including:
 1. Transfer process, including transaction time and place, delivery conditions, delivery procedures, payment conditions, transaction quantity, after-sales service, etc.;
 2. Transfer stage, including ex-factory stage, wholesale stage, retail stage, export stage, etc.;
 3. Transfer environment, including ethnic customs, consumer preferences, political stability, and fiscal, tax, and foreign exchange policies, etc.;

4. Performance, specifications, model, structure, type, depreciation method, etc., of tangible assets;
 5. Time, duration, location, fee standards, etc., for providing the right to use;
 6. Investment expenditures, maintenance costs, etc., of the asset owner for the asset.
2. Transfer of financial assets, including actual holding period, liquidity, security, and yield of financial assets. Among them, analysis content for equity transfer transactions includes company nature, business structure, asset composition, industry, industry cycle, business model, enterprise scale, asset allocation and usage, operational stage of the enterprise, growth, business risk, financial risk, transaction time, geographical region, equity relationship, historical and future operating conditions, goodwill, tax benefits, liquidity, economic trends, macro-economic policies, enterprise income and cost structure, and other factors;
3. Transfer of the right to use or ownership of intangible assets, including:
7. Category, purpose, applicable industry, expected return of intangible assets;
 8. Development investment, transfer conditions, exclusivity, substitutability, degree and duration of protection by relevant national laws, geographical location, useful life, R&D stage, rights to maintain, improve, and update, transfer costs and expenses, functional risk situation, amortization method, and other special factors that substantially affect its value.
4. Financing, including financing amount, currency, term, guarantee, creditworthiness of the financier, repayment method, interest calculation method, etc.;
5. Service transactions, including nature of the service, technical requirements, professional level, responsibilities, payment terms and methods, direct and indirect costs, etc.

If there are significant differences between related and non-related transactions in the above aspects, reasonable adjustments shall be made for the impact of such differences on price. If reasonable adjustments cannot be made, other reasonable transfer pricing methods shall be selected.

Article 18

The resale price method uses the price at which a

related party resells goods purchased from another related party to a non-related party, minus a comparable non-related transaction gross margin, as the arm's length price for the goods purchased by the related party. The calculation formula is as follows:

Arm's length price = Resale price to non-related party × (1 - Comparable non-related transaction gross margin ratio)

Comparable non-related transaction gross margin ratio = Comparable non-related transaction gross margin / Comparable non-related transaction net revenue × 100%

The resale price method is generally applicable to simple processing or pure purchase and sale businesses where the reseller does not perform substantial value-added processing on the goods, such as changing appearance, performance, structure, or replacing trademarks.

The comparability analysis for the resale price method shall particularly examine differences in functions performed, risks assumed, assets used, and contractual terms between related and non-related transactions, as well as other factors affecting gross margin, specifically including marketing, distribution, product support and service functions, inventory risk, value and useful life of machinery and equipment, use and value of intangible assets, valuable marketing intangibles, wholesale or retail stage, business experience, accounting treatment, and management efficiency, etc.

If there are significant differences between related and non-related transactions in the above aspects, reasonable adjustments shall be made for the impact of such differences on the gross margin ratio. If reasonable adjustments cannot be made, other reasonable transfer pricing methods shall be selected.

Article 19

The cost-plus method uses the reasonable costs incurred in the related party transaction plus a comparable non-related transaction markup as the arm's length price for the related party transaction. The calculation formula is as follows:

Arm's length price = Reasonable costs incurred in the related party transaction × (1 + Comparable non-related transaction cost-plus ratio)

Comparable non-related transaction cost-plus ratio = Comparable non-related transaction markup / Comparable non-related transaction costs × 100%

The cost-plus method is generally applicable to related party transactions such as the transfer of the right to use or ownership of tangible assets, financing, and service transactions.

The comparability analysis for the cost-plus method shall particularly examine differences in functions performed, risks assumed, assets used, and contractual terms between related and non-related transactions, as well as other factors affecting the cost-plus ratio, specifically including manufacturing, processing, installation, and testing functions, market and exchange rate risks, value and useful life of machinery and equipment, use and value of intangible assets, business experience, accounting treatment, production and management efficiency, etc. If there are significant differences between related and non-related transactions in the above aspects, reasonable adjustments shall be made for the impact of such differences on the cost-plus ratio. If reasonable adjustments cannot be made, other reasonable transfer pricing methods shall be selected.

Article 20

The transactional net margin method determines the profit of a related party transaction based on the profit indicators of comparable non-related transactions. Profit indicators include the EBIT margin, full cost markup ratio, return on assets, Berry ratio, etc. The specific calculation formulas are as follows:

- (1) EBIT margin = $\text{EBIT} / \text{Operating revenue} \times 100\%$
- (2) Full cost markup ratio = $\text{EBIT} / \text{Full cost} \times 100\%$
- (3) Return on assets = $\text{EBIT} / [(\text{Total assets at the beginning of the year} + \text{Total assets at the end of the year}) / 2] \times 100\%$
- (4) Berry ratio = $\text{Gross profit} / (\text{Operating expenses} + \text{Administrative expenses}) \times 100\%$

The selection of profit indicators shall reflect the functions performed, risks assumed, and assets used by the parties to the transaction. The calculation of profit indicators is based on enterprise accounting treatment, and adjustments to indicator definitions may be made if necessary.

The transactional net margin method is generally applicable to related party transactions such as the transfer and receipt of the right to use or ownership of tangible assets, receipt of the right to use intangible assets, and service transactions of enterprises that do not own significant value intangible assets.

The comparability analysis for the transactional

net margin method shall particularly examine differences in functions performed, risks assumed, and assets used between related and non-related transactions, differences in economic environment, and other factors affecting profit, specifically including industry and market conditions, business scale, economic cycle and product life cycle, allocation of revenue, costs, expenses, and assets among transactions, accounting treatment, and operational management efficiency, etc.

If there are significant differences between related and non-related transactions in the above aspects, reasonable adjustments shall be made for the impact of such differences on profit. If reasonable adjustments cannot be made, other reasonable transfer pricing methods shall be selected.

Article 21

The profit split method calculates the profit that should be allocated to each party based on the contribution of the enterprise and its related parties to the combined profit (actual or expected) of the related party transaction. The profit split method mainly includes the general profit split method and the residual profit split method.

The general profit split method usually determines the reasonable profit that each party should obtain based on the functions performed, risks assumed, and assets used by the parties to the related party transaction, using a profit split method consistent with the arm's length principle; when it is difficult to obtain comparable transaction information but the combined profit can be reasonably determined, factors related to value contribution such as revenue, costs, expenses, assets, and number of employees may be considered in light of actual circumstances to analyze the value contribution made by each party to the transaction and allocate the profit among the parties.

The residual profit split method deducts the routine profit allocated to each party from the combined profit of the parties to the transaction, and uses the remainder as residual profit, which is then allocated based on the degree of contribution of each party to the residual profit.

The profit split method is generally applicable to related party transactions where both the enterprise and its related parties make unique contributions to profit creation, the business is highly integrated, and it is difficult to separately evaluate the results of each party's transaction. The application of the profit split method shall reflect the basic principle

that profit should be taxed where economic activities occur and value is created.

The comparability analysis for the profit split method shall particularly examine the functions performed, risks assumed, and assets used by the parties to the transaction, the allocation of revenue, costs, expenses, and assets among the parties, location-specific factors such as cost savings and market premiums, and other value contribution factors, and determine the reliability of the information and assumptions used to determine each party's contribution to residual profit, etc.

Article 22

Other methods consistent with the arm's length principle include asset valuation methods such as the cost method, market method, and income method, and other methods that can reflect the principle that profits should match the place where economic activities occur and value is created.

The cost method is a valuation method based on the substitution or replacement principle, determining the value of the subject asset based on the expenditure incurred to create a similar asset at current market prices. The cost method is applicable to the valuation of assets that can be substituted.

The market method is a valuation method that uses recent transaction prices of identical or similar assets in the market, and determines the value of the subject asset through direct comparison or analogous analysis. The market method is applicable to asset valuation when non-related comparable transaction information identical or similar to the subject asset can be found in the market.

The income method is a valuation method that determines the value of an asset based on the present value of its expected future returns. The income method is applicable to the valuation of an enterprise's overall assets and individual assets with predictable future returns.

Article 23

When analyzing and evaluating the related party transactions of an enterprise under investigation, the tax authority shall, based on the analysis of the functions and risks of the parties to the transaction, select the party with relatively simple functions as the tested party.

Article 24

When performing comparability analysis, tax au-

thorities shall prioritize the use of public information, but may also use non-public information.

Article 25

When analyzing and evaluating whether the related party transactions of an enterprise under investigation comply with the arm's length principle, tax authorities may, according to actual circumstances, choose statistical methods such as the arithmetic mean, weighted average, or interquartile range to calculate the average or interquartile range of comparable enterprise profits or prices on an annual basis or averaged over multiple years.

The tax authority shall test and adjust the related party transactions of the enterprise under investigation on an annual basis according to comparable profit levels or comparable prices.

When using the interquartile range method to analyze and evaluate an enterprise's profit level, if the enterprise's actual profit level is lower than the median of the comparable enterprise profit ratio range, in principle, an adjustment to not less than the median shall be made.

Article 26

When analyzing and evaluating the toll processing business provided by an enterprise under investigation to its related party, if the comparable enterprises do not have the same business model, and the difference in business model would affect the profit level, adjustments for the difference in business model shall be made, restoring the value of the non-chargeable materials and equipment. If the enterprise provides true and complete information on the entire value chain of the toll processing product, which can reflect the overall profit levels of the related parties, the tax authority may make comparability adjustments for the funding cost differences between the enterprise under investigation and comparable enterprises due to material restoration. If the profit level adjustment exceeds 10%, comparable enterprises shall be reselected.

Except as provided in the first paragraph of this Article, no adjustments shall be made for profit differences arising from differences in working capital occupation.

Article 27

When analyzing and evaluating whether the related party transactions of an enterprise under investigation comply with the arm's length principle, if

the selected comparable enterprises and the enterprise under investigation are in different economic environments, location-specific factors such as cost savings and market premiums shall be analyzed, and a reasonable transfer pricing method shall be selected to determine the contribution of location-specific factors to profit.

Article 28

Enterprises engaged in single production businesses such as toll processing or import processing for overseas related parties, or engaged in distribution or contract R&D businesses, shall in principle maintain reasonable profit levels.

If such enterprises incur losses, regardless of whether they meet the contemporaneous documentation preparation standards in the “State Administration of Taxation Announcement on Improving Related Party Reporting and Contemporaneous Documentation Management” (State Administration of Taxation Announcement 2016 No. 42), they shall prepare the local file of contemporaneous documentation for the loss year. Tax authorities shall focus on reviewing the local files of such enterprises and strengthen monitoring and management.

If such enterprises bear risks and losses that should be borne by related parties due to reasons such as decision-making errors, insufficient production, product unsalability, or R&D failure, the tax authority may make special tax adjustments.

Article 29

When investigating and analyzing related party transactions, the tax authority shall determine whether the benefits obtained by the enterprise match the functions it performs or the risks it assumes.

If the concealment of related party transactions between an enterprise and its related parties directly or indirectly leads to a reduction in the overall national tax revenue, the tax authority may restore the concealed transactions and make special tax adjustments.

If the offsetting of related party transactions between an enterprise and its related parties directly or indirectly leads to a reduction in the overall national tax revenue, the tax authority may restore the offsetting transactions and make special tax adjustments.

Article 30

When determining the contribution of an enterpri-

se and its related parties to the value of intangible assets and the corresponding profit allocation, a comprehensive analysis of the global operating processes of the enterprise group to which the enterprise belongs shall be conducted, fully considering the value contributions of all parties in the development, value enhancement, maintenance, protection, application, and promotion of intangible assets, the manner in which the value of intangible assets is realized, and the interaction of intangible assets with the functions, risks, and assets of other businesses within the group.

An enterprise that only owns the intangible asset but does not contribute to its value shall not participate in the allocation of intangible asset profits. In the formation and use of intangible assets, if only funds are provided without actually performing related functions and assuming corresponding risks, only reasonable funding cost returns shall be obtained.

Article 31

Royalties paid or received by an enterprise and its related parties for the transfer or receipt of the right to use intangible assets shall be adjusted in a timely manner under the following circumstances. If not adjusted in a timely manner, the tax authority may make special tax adjustments:

1. Fundamental changes in the value of the intangible asset;
2. According to business, comparable transactions between non-related parties should have a royalty adjustment mechanism;
3. During the use of the intangible asset, changes occur in the functions performed, risks assumed, or assets used by the enterprise and its related parties;
4. The enterprise and its related parties contribute to the subsequent development, value enhancement, maintenance, protection, application, and promotion of the intangible asset but do not receive reasonable compensation.

Article 32

Royalties paid or received by an enterprise and its related parties for the transfer or receipt of the right to use intangible assets shall match the economic benefits brought by the intangible assets to the enterprise or its related parties. If they do not match the economic benefits and reduce the taxable income or profit of the enterprise or its related parties, the tax authority may make special tax adjust-

ments. If no economic benefits are brought and the arm's length principle is not complied with, the tax authority may make a full special tax adjustment based on the amount already deducted before tax. If an enterprise pays royalties to a related party that only owns the intangible asset but does not contribute to its value creation, and this does not comply with the arm's length principle, the tax authority may make a full special tax adjustment based on the amount already deducted before tax.

Article 33

If an enterprise establishes a holding company or financing company overseas mainly for financing and listing purposes, and pays royalties to overseas related parties only for the incidental benefits arising from financing and listing activities, and this does not comply with the arm's length principle, the tax authority may make a full special tax adjustment based on the amount already deducted before tax.

Article 34

If the price paid or received by an enterprise and its related parties for service transactions does not comply with the arm's length principle and reduces the taxable income or profit of the enterprise or its related parties, the tax authority may make special tax adjustments.

Related party service transactions that comply with the arm's length principle shall be beneficial service transactions and priced according to the business and arm's length price between non-related parties under the same or similar circumstances. Beneficial services refer to service activities that can bring direct or indirect economic benefits to the service recipient, and that non-related parties would be willing to purchase or carry out themselves under the same or similar circumstances.

Article 35

If an enterprise pays for non-beneficial services to its related parties, the tax authority may make a full special tax adjustment based on the amount already deducted before tax. Non-beneficial services mainly include the following circumstances:

1. Services received by the service recipient from its related parties that have already been purchased or carried out by the service recipient itself;
2. Control, management, and supervision services received by the service recipient from its

related parties for the purpose of safeguarding the investment interests of the direct or indirect investors of the service recipient. Such services mainly include:

1. Board of directors activities, shareholders' meeting activities, board of supervisors activities, and stock issuance activities that serve shareholders;
2. Activities related to the preparation and analysis of operating reports or financial reports of the direct or indirect investors, group headquarters, and regional headquarters of the service recipient;
3. Financing activities related to the operations and capital operations of the direct or indirect investors, group headquarters, and regional headquarters of the service recipient;
4. Finance, tax, personnel, legal, and other activities carried out for group decision-making, supervision, control, and compliance needs;
5. Other similar circumstances.
3. Services received by the service recipient from its related parties that are not specifically targeted at it, but from which it obtains additional benefits only because it is affiliated with the enterprise group. Such services mainly include:
 6. Changes in legal form, debt restructuring, equity acquisition, asset acquisition, mergers, divisions, and other group restructuring activities that bring resource integration effects and economies of scale to the service recipient;
 7. Related activities that bring benefits such as reduced financing costs to the service recipient due to the improved credit rating of the enterprise group;
 8. Other similar circumstances.
4. Services received by the service recipient from its related parties that have already been compensated for in other related party transactions. Such services mainly include:
 9. Services related to patents or non-patented technology compensated for from royalty payments;
 10. Services related to loans compensated for from loan interest payments;
 11. Other similar circumstances.
5. Related party service activities that are unrelated to the functions performed and risks assu-

med by the service recipient, or do not meet the business needs of the service recipient;

6. Other related party service activities that do not bring direct or indirect economic benefits to the service recipient, or that non-related parties are unwilling to purchase or carry out themselves.

Article 36

When receiving or providing beneficial services, enterprises shall fully consider the specific content and characteristics of the services, the functions, risks, costs, and expenses of the service provider, the benefits to the service recipient, market environment, financial conditions of the transacting parties, and pricing of comparable transactions, select a reasonable transfer pricing method in accordance with the relevant provisions of these Measures, and follow the following principles:

1. If related party services can be aggregated by cost center according to each service recipient or service item, the transaction price shall be determined based on the reasonable costs and expenses of the service recipient or service item;
2. If related party services cannot be aggregated by cost center according to each service recipient or service item, reasonable standards and proportions shall be used to allocate to each service recipient, and the transaction price shall be determined based on the allocated costs and expenses. Allocation standards shall be reasonably determined according to the nature of the services, and may use operating revenue, operating assets, number of personnel, personnel salaries, equipment usage, data traffic, working hours, and other reasonable indicators according to actual circumstances. The allocation results shall match the degree of benefit to the service recipient. Costs and expenses related to non-beneficial services shall not be included in the allocation base.

Article 37

If an enterprise pays fees to an overseas related party that does not perform functions, assume risks, or have substantive business activities, and this does not comply with the arm's length principle, the tax authority may make a full special tax adjustment based on the amount already deducted before tax.

Article 38

For transactions between domestic related parties with the same effective tax burden, as long as the transaction does not directly or indirectly lead to a reduction in the overall national tax revenue, in principle, no special tax adjustment shall be made.

Article 39

After investigation, if the tax authority finds no special tax adjustment issues with the enterprise, it shall make a conclusion of the special tax investigation and serve the enterprise with the "Notice of Conclusion of Special Tax Investigation."

Article 40

After investigation, if the tax authority finds special tax adjustment issues with the enterprise, it shall implement adjustments according to the following procedures:

1. Formulate a special tax investigation adjustment plan based on calculation, argumentation, and comparability analysis;
2. Negotiate with the enterprise based on the proposed adjustment plan. Both parties shall designate a chief negotiator. Investigators shall make a "Record of Negotiation Content" and have it signed and confirmed by the chief negotiators of both parties. If the enterprise refuses to sign, the tax authority investigators (at least two) shall note this. If the enterprise refuses to negotiate, the tax authority shall serve the enterprise with the "Preliminary Notice of Special Tax Investigation Adjustment";
3. During negotiations, if the enterprise has objections to the proposed adjustment plan, it shall provide further information within the time limit specified by the tax authority. After receiving the information, the tax authority shall carefully review it and make a conclusion. Based on the conclusion, if a special tax adjustment is required, the tax authority shall form a preliminary adjustment plan and serve the enterprise with the "Preliminary Notice of Special Tax Investigation Adjustment";
4. If the enterprise has objections after receiving the "Preliminary Notice of Special Tax Investigation Adjustment", it shall submit a written objection within 7 days from the date of receipt. After receiving the enterprise's opinion, the tax authority shall negotiate and review again. Based on the conclusion, if a special tax

adjustment is required and a final adjustment plan is formed, the tax authority shall serve the enterprise with the “Notice of Special Tax Investigation Adjustment”;

5. If the enterprise does not raise objections within the specified time limit after receiving the “Preliminary Notice of Special Tax Investigation Adjustment”, or raises objections but then refuses to negotiate, or raises objections but they are not adopted after review by the tax authority, the tax authority shall use the preliminary adjustment plan as the final adjustment plan and serve the enterprise with the “Notice of Special Tax Investigation Adjustment”.

Article 41

If the enterprise has objections after receiving the “Notice of Special Tax Investigation Adjustment”, it may, after paying or remitting the tax, interest, and late payment surcharge in accordance with the “Notice of Special Tax Investigation Adjustment” or providing corresponding security, apply for administrative reconsideration according to law.

If an enterprise has objections after receiving the “Notice of Special Tax Investigation Adjustment” served by the State Administration of Taxation, it shall apply for administrative reconsideration to the State Administration of Taxation at the next higher level; if an enterprise has objections after receiving the “Notice of Special Tax Investigation Adjustment” served by the local tax authority, it may choose to apply for administrative reconsideration to the local tax authority at the next higher level or the people’s government at the same level. If dissatisfied with the administrative reconsideration decision, it may file an administrative lawsuit with the people’s court according to law.

Article 42

If the tax authority makes a special tax adjustment on an enterprise involving the enterprise’s payment of interest, rent, or royalties to an overseas related party, unless otherwise provided, the tax already withheld shall not be adjusted.

Article 43

The enterprise may pay tax on its own before the “Notice of Special Tax Investigation Adjustment” is served. If the enterprise pays tax on its own, it shall fill out the “Form for Self-Payment of Tax under Special Tax Adjustment.”

Article 44

If the tax authority makes a special tax adjustment on an enterprise, it shall charge daily interest on the enterprise income tax levied retroactively for transactions occurring after January 1, 2008, in accordance with the relevant provisions of the Enterprise Income Tax Law and its implementation regulations.

The tax paid retroactively under the special tax investigation adjustment shall be allocated to the respective tax years in chronological order based on the year to which the tax should be paid. Interest shall be calculated from June 1 of the year following the tax year to which the tax belongs to the date of payment or additional payment, with the date of deposit as the cutoff:

1. If the enterprise pays tax before the “Notice of Special Tax Investigation Adjustment” is served or pays additional tax after it is served, interest shall be calculated from June 1 of the year following the tax year to which the tax belongs to the date of payment or additional payment. If the enterprise fails to pay tax beyond the payment deadline specified in the “Notice of Special Tax Investigation Adjustment”, a late payment surcharge shall be charged in accordance with the relevant provisions of the Tax Collection and Administration Law and its implementation rules from the day following the expiration of the payment deadline, and no interest shall be charged during the period when the late payment surcharge is charged;
2. The interest rate shall be calculated at the benchmark interest rate for RMB loans published by the People’s Bank of China for the same period as the tax payment period on December 31 of the tax year to which the tax belongs (hereinafter referred to as the benchmark interest rate) plus 5 percentage points, and the daily interest rate shall be converted based on 365 days per year;
3. If the enterprise provides contemporaneous documentation and relevant information in accordance with relevant provisions, or does not need to prepare contemporaneous documentation in accordance with relevant provisions but provides other relevant information as required by the tax authority, interest may be charged only at the benchmark interest rate.

If, after investigation by the tax authority, the actual amount of related party transactions of the enter-

prise reaches the standard for preparing contemporaneous documentation, but the enterprise fails to provide contemporaneous documentation to the tax authority as required, the interest on the tax levied retroactively by the tax authority shall be subject to the provisions of paragraph 2, item 2 of this Article.

Article 45

If the enterprise makes self-adjustments and pays additional tax and actively provides contemporaneous documentation and other relevant information, or does not need to prepare contemporaneous documentation in accordance with relevant provisions but provides other relevant information as required by the tax authority, the interest on the self-adjusted and paid tax for transactions occurring after January 1, 2008, shall be charged at the benchmark interest rate.

Article 46

If the enterprise under investigation applies to change its business address or cancel its tax registration during the period when the tax authority is implementing special tax investigation adjustments, the tax authority shall in principle not handle tax change or cancellation procedures before the investigation is concluded.

Article 47

In accordance with the relevant provisions of tax treaties concluded by China, the State Administration of Taxation may, based on an application by an enterprise or a request by the competent tax authority of the treaty partner, initiate mutual agreement procedures and conduct negotiation with the competent tax authority of the treaty partner to avoid or eliminate international double taxation caused by special tax adjustment matters.

The content of mutual agreement includes:

1. Negotiation and conclusion of bilateral or multilateral advance pricing arrangements;
2. Negotiation of corresponding adjustments caused by special tax investigation adjustments implemented by one treaty partner.

Article 48

If an enterprise applies to initiate mutual agreement procedures, it shall submit the "Application Form for Initiating Mutual Agreement Procedures for Special Tax Adjustment" and a description of

the special tax adjustment matters in writing to the State Administration of Taxation within the time limit specified in the tax treaty. If the enterprise submits the above information in person, the submission date shall be the application date; if submitted by mail, the date when the State Administration of Taxation receives the above information shall be the application date.

After receiving the information submitted by the enterprise, if the State Administration of Taxation considers that it complies with the relevant provisions of the tax treaty, it may initiate mutual agreement procedures; if it considers the information incomplete, it may require the enterprise to provide supplementary information.

Article 49

If the competent tax authority of the tax treaty partner requests to initiate mutual agreement procedures, after receiving a formal letter, if the State Administration of Taxation considers that it complies with the relevant provisions of the tax treaty, it may initiate mutual agreement procedures.

If the State Administration of Taxation considers that the information provided by the competent tax authority of the tax treaty partner is incomplete or the facts are unclear, it may require the other party to provide supplementary information, or require the domestic enterprise involved to assist in verification through the competent tax authority.

Article 50

If the State Administration of Taxation decides to initiate mutual agreement procedures, it shall notify the provincial tax authority in writing and inform the competent tax authority of the tax treaty partner. The competent tax authority responsible for the special tax adjustment matters shall, within 15 working days after receiving the written notice, serve the enterprise with a "Notice of Tax Matters" initiating the mutual agreement procedures.

Article 51

During the mutual agreement process, the tax authority may require the enterprise to provide further supplementary information, and the enterprise shall submit it within the specified time limit.

Article 52

Under any of the following circumstances, the State Administration of Taxation may reject an enterpri-

se's application or a request by the competent tax authority of the tax treaty partner to initiate mutual agreement procedures:

1. The enterprise or its related parties are not tax residents of either treaty partner;
2. The application or request does not relate to special tax adjustment matters;
3. The application or request clearly lacks factual or legal basis;
4. The application does not comply with the relevant provisions of the tax treaty;
5. The special tax adjustment case has not been concluded or, although concluded, the enterprise has not paid the tax payable.

Article 53

Under any of the following circumstances, the State Administration of Taxation may suspend mutual agreement procedures:

1. The enterprise applies to suspend the mutual agreement procedures;
2. The competent tax authority of the tax treaty partner requests to suspend the mutual agreement procedures;
3. The application must be based on the investigation and adjustment results of another enterprise under investigation, and the investigation and adjustment procedures for that other enterprise have not been completed;
4. Other circumstances leading to the suspension of mutual agreement procedures.

Article 54

Under any of the following circumstances, the State Administration of Taxation may terminate mutual agreement procedures:

1. The enterprise or its related parties do not provide necessary information related to the case, or provide false or incomplete information, or there are other circumstances of non-cooperation;
2. The enterprise applies to withdraw or terminate the mutual agreement procedures;
3. The competent tax authority of the tax treaty partner withdraws or terminates the mutual agreement procedures;
4. Other circumstances leading to the termination of mutual agreement procedures.

Article 55

If the State Administration of Taxation decides to suspend or terminate mutual agreement proce-

dures, it shall notify the provincial tax authority in writing. The competent tax authority responsible for the special tax adjustment matters shall, within 15 working days after receiving the written notice, serve the enterprise with a "Notice of Tax Matters" suspending or terminating the mutual agreement procedures.

Article 56

After the State Administration of Taxation and the competent tax authority of the tax treaty partner sign a mutual agreement, the State Administration of Taxation shall notify the provincial tax authority in writing and attach the mutual agreement. The competent tax authority responsible for the special tax adjustment matters shall, within 15 working days after receiving the written notice, serve the enterprise with a "Notice of Tax Matters" and attach the mutual agreement. If additional (refund) tax is required, it shall attach the "Notice of Additional (Refund) Tax Payment under Mutual Agreement for Special Tax Adjustment" or the "Notice of Additional (Refund) Tax Payment under Advance Pricing Arrangement" and monitor the implementation of the additional (refund) tax payment.

If taxable income or profit is calculated in foreign currency, it shall be converted into RMB at the central parity rate of RMB on the last day of the month preceding the date when the mutual agreement is served to the enterprise, to calculate the tax to be paid or refunded.

If interest is to be charged on the tax paid retroactively, it shall be implemented at the RMB loan benchmark interest rate stipulated in Article 122 of the "Implementation Regulations of the Enterprise Income Tax Law of the People's Republic of China".

Article 57

Tax authorities at all levels shall keep confidential the relevant information provided by the competent tax authority of the tax treaty partner, the enterprise or its withholding agent, agent, etc. during mutual agreement procedures.

Article 58

If the enterprise or its withholding agent, agent, etc. engage in fraud or other illegal acts during mutual agreement procedures, the tax authority shall handle the matter in accordance with the relevant provisions of the Tax Collection and Administration Law and its implementation rules.

Article 59

If an enterprise applies to the State Administration of Taxation for mutual agreement procedures in accordance with the provisions of these Measures, the information submitted shall be in both Chinese and English, and the content submitted by the enterprise to the competent tax authorities of both treaty partners shall be consistent.

Article 60

Mutual agreement procedures involving the interpretation or implementation of tax treaty provisions shall be implemented in accordance with the relevant provisions of the “State Administration of Taxation Announcement on the Issuance of the ‘Implementation Measures for Mutual Agreement Procedures under Tax Treaties’” (State Administration of Taxation Announcement 2013 No. 56).

Article 61

Mutual agreement cases accepted before the implementation of these Measures but not yet agreed upon shall be governed by the provisions of these Measures.

Article 62

These Measures shall take effect from May 1, 2017. The “Implementation Measures for Special Tax Adjustments (Trial)” (issued as document Guo Shui Fa [2009] No. 2) Chapters 4, 5, 11, and 12, the “State Administration of Taxation Notice on Strengthening Issues Related to Transfer Pricing Follow-up Management” (Guo Shui Han [2009] No. 188), the “State Administration of Taxation Notice on Strengthening Monitoring and Investigation of Cross-border Related Party Transactions” (Guo Shui Han [2009] No. 363), the “State Administration of Taxation Announcement on Issues Related to Special Tax Adjustment Monitoring and Management” (State Administration of Taxation Announcement 2014 No. 54), and the “State Administration of Taxation Announcement on Enterprise Income Tax Issues Related to Payments of Fees to Overseas Related Parties” (State Administration of Taxation Announcement 2015 No. 16) are simultaneously repealed.



CPO & Partners (Shanghai) Co.,Ltd.
Yan 'an middle road n.841, Jing 'an District 200040, Shanghai - OOCL Plaza, Floor 26, Suite 2604, 2605
Tel: +86 021 63120097 – www.cpopartners.com – e-mail: shanghai@cpopartners.com