

部分对外支付项目的完税流程发生重大改革

2013年7月9日，国家税务总局和国家外汇管理局联合发布40号公告，重新规定了居民企业在进行部分对外支付项目时的税务管理要求，该公告将于2013年9月1日生效。公告的范围囊括了中国外汇管理法规规定的跨境服务费及其他一些经常性项目和资本性项目。

40号公告规定了新的税务备案制度，以取代现行的预先提供税务证明的制度，符合近年来中国逐步放宽外汇管理体系的总体趋势。对于每笔超过5万美元的对外支付，境内付款人需要向其主管国税机关进行税务备案，免备案项目除外。境内付款人在首次付汇备案时需提交合同（协议）或相关交易凭证复印件，并填报包含基本情况的《服务贸易等项目对外支付税务备案表》（以下简称“《备案表》”）。同一笔合同后续的对外支付，仅需要重新填报《备案表》以反映出对应支付的基本情况即可。

40号公告涵盖的对外支付项目十分宽泛，包括境外非居民从境内获得的服务贸易收入（如运输、旅游、通信、建筑、安装、保险服务、金融服务、计算机和信息服务、娱乐服务等）、专有权利使用和特许、融资租赁租金、不动产的转让收入、股权转让所得、股权投资所得（如股息）、境外债务所得（如利息）、担保费及各种经常转移收入等项目。境外个人在境内的工作报酬也包括在内。40号公告的备案范围还包括外国投资者以境内直接投资合法所得在境内再投资。

40号公告中规定的税务备案要求仅适用于单笔支付等值5万美元以上（不含等值5万美元）的外汇资金。同时，40号公告列明了一系列无需进行税务备案即可从中国向境外支付的情形。

40号公告给在中国运营的跨国公司带来了便利。它取消了现行法规中规定的必须在付汇前提供税务证明的规定，同时将显著加快公告范围内所囊括项目的对外支付速度。然而，在新的备案制度下，纳税人如果不能证明对外支付项目相关的税款已足额缴纳，则将可能面临更大的处罚风险。

OECD 发布《税基侵蚀和利润转移行动计划》

2013年7月19日，经济合作与发展组织（以下简称“OECD”）公布了就有关税基侵蚀和利润转移（以下简称“BEPS”）问题开展多边合作的行动计划。OECD在莫斯科召开的二十国集团财长会议（以下简称“G20”）上宣布了该BEPS行动计划，这标志着世界各国开始共同致力于推进国际税收体系的现代化进程。该行动计划提出了15项具体行动，并确定了行动的预期成效及时间表。

具体行动内容概括在下表中：

行动1 - 应对数字经济和电子商务带来的税务挑战	发掘数字经济和电子商务给当前国际税收法规在实施中带来的主要困难，制定解决困难的具体方案，并对包括直接税与间接税在内的相关税务问题进行全面考量。
行动2 - 消除混合型投资工具和法律实体带来的税务影响	制定税收协定范本相关条款并为国内法规的修订提供建议，从而消除混合型投资工具和法律实体带来的影响（如双重不征税，双重扣除和长期纳税递延等等）。
行动3 - 强化受控外国企业管理	为受控外国企业管理规则的制定提出建议。
行动4 - 限制通过利息扣除及其他财务支付产生的税基侵蚀	为相关法规的制定建议最佳方案，以应对企业通过诸如利息支出（如利用关联方及第三方债务来获得过多利息扣除或以此为资金用于产生免税收入或递延纳税收入）以及其他具有相同经济效果的财务支付手段来侵蚀税基的情况。
行动5 - 通过提高税务安排的透明性及关注税务安排的实质性来有效地对抗逃税避税行为	针对逃税避税行为修订相关税务文件时，应优先考虑增加跨国企业税务安排的透明度。比如强制性规定，一个国家税务部门针对跨国企业享受优惠税制的裁定应通过信息交换自动传达到另一相关国家的税务部门；又比如规定，跨国公司在一个国家要想享受某项优惠税制，必须满足某些“实质性经营活动”的要求。
行动 6 - 防止滥用协定	制定税收协定范本相关条款并为国内法规的修订提供建议，从而防止在不符享受协定待遇的情况下赋予协定优惠。
行动 7 - 防止在没有法律依据的情况下规避常设机构	修改常设机构的定义，防止在没有法律依据的情况下规避构成常设机构的行为（包括通过匿名代理安排及其他特定行为）。
行动 8 - 确保转让定价安排与价值创造相匹配- 无形资产	制定相关规定以防止跨国公司通过在集团内成员企业间转移无形资产来实现税基侵蚀和利润转移，具体包括：更宽泛明确地定义无形资产，确保无形资产转让所产生的利润与价值创造相匹配，针对难以估值的无形资产制定特别规定，并细化对成本分摊协议的法律指引。
行动 9 - 确保转让定价安排与价值创造相匹配- 风险与资本	制定相关规定以防止跨国公司通过在集团内成员企业间转移风险或通过将过多资本集中于特定集团成员来实现税基侵蚀和利润转移，具体包括：制定措施防止仅因其提供了资本或根据合同约定承担了风险就获得不合理的利润。
行动 10 - 确保转让定价安排与价值创造相匹配- 其它高风险交易	制定相关规定以防止纳税人通过进行一些独立企业间不会或很少会出现的交易来实现税基侵蚀和利润转移，具体包括：对关联方交易按经济实质重新定性，明晰转移定价方法在全球价值链中的应用，限制对以侵蚀税基为目的的管理费、总部费用的列支。
行动 11 - 建立收集、分析税基侵蚀和利润转移相关数据和制定应对方案	评估税基侵蚀和利润转移的规模和对经济的影响，提出应对建议，并确保有适当的工具来评估这些应对措施的效果。

Tax clearance procedure for certain outbound remittances overhauled

On 9 July 2013, the State Administration of Taxation (SAT) and the State Administration of Foreign Exchange (SAFE) jointly issued Announcement 40 to prescribe a new tax registration requirement for Chinese residents making certain payments overseas, effective from 1 September 2013. The scope of the new circular covers cross-border service fees as well as other current account and capital account items under China's foreign exchange regulations.

Announcement 40 prescribes a new tax recordal filing system to replace the existing advance tax certificate system. For each covered remittance that exceeds USD 50,000, the Chinese payer needs to perform a tax recordal filing with its in-charge state tax bureau (ISTB), unless the remittance falls into an exemption list. The reporting package submitted by the Chinese payer for the initial remittance includes the executed contract or other legal documents evidencing the relevant transaction, and the 'tax recordal filing form', which contains basic information on the initial outbound remittance. For any subsequent remittance related to the same transaction, the taxpayer only needs to provide an updated tax recordal filing form reflecting that particular remittance.

The types of remittances that fall within the scope of Announcement 40 are fairly broad. They include: income derived by non-residents from services (e.g., transportation, tourism, telecommunications, construction, installation, insurance, finance, information technology, and entertainment), intangible licensing, finance lease, real estate transfer, equity transfer, equity investment (e.g., dividend), foreign loan (e.g., interest), guarantee, and various current transfer items, among other things. China-sourced salary income earned by foreign individuals is included. Reinvestment of China-sourced earnings by a foreign investor within China is subject to the provisions in Announcement 40 as well.

The tax recordal filing requirement of Announcement 40 applies to the aforementioned payments only if the amount of a single remittance exceeds USD 50,000. In addition, Announcement 40 prescribes a number of instances where no tax recordal filing is necessary to affect a remittance from China to overseas.

Announcement 40 is a welcome development for multinational companies (MNCs) doing business in China. It eliminates the existing requirement that tax clearance must be secured before outbound remittance can be carried out; it will also significantly expedite cash transfers from China to overseas for items covered by the circular. However, with the new tax recordal filing system, taxpayers may face greater penalty risks if they are unable to demonstrate that Chinese taxes in connection with the remittance have been adequately settled.

OECD issues Action Plan on Base Erosion and Profit Shifting

On July 19, 2013, the Organisation for Economic Co-operation and Development (OECD) publicly released its "Action Plan for multilateral cooperation to address tax Base Erosion and Profit Shifting (BEPS). The BEPS action plan was presented to the G20 Finance Ministers at their meeting in Moscow, and inaugurates a global collaborative effort to modernise the international tax system. The plan describes 15 proposed actions, identifies expected outputs, and establishes the anticipated timeframe.

The specific actions are summarised below:

Action 1 - <i>Address the tax challenges of the digital economy</i>	Identify the main difficulties that the digital economy poses for the application of existing international tax rules and develop detailed options to address these difficulties, taking a holistic approach and considering both direct and indirect taxation.
Action 2 - <i>Neutralise the effects of hybrid mismatch arrangements</i>	Develop model treaty provisions and recommendations for the design of domestic rules to neutralise the effect (e.g., double non-taxation, double deduction, long-term deferral) of hybrid instruments/entities.
Action 3 - <i>Strengthen CFC rules</i>	Develop recommendations regarding the design of Controlled Foreign Corporation (CFC) rules.
Action 4 - <i>Limit base erosion via interest deductions and other financial payments</i>	Develop recommendations regarding best practices in the design of rules to prevent base erosion through interest expense, e.g., the use of related-party and third-party debt to achieve excessive interest deductions or to finance the production of exempt or deferred income, and other financial payments that are economically equivalent to interest payments.
Action 5 - <i>Counter harmful tax practices more effectively, taking into account transparency and substance</i>	Revamp the work on harmful tax practices with a priority on improving transparency, including compulsory spontaneous exchange on rulings related to preferential regimes, and on requiring 'substantial activity for any preferential regime.
Action 6 - <i>Prevent treaty abuse</i>	Develop model treaty provisions recommendations regarding the design of domestic rules to prevent the granting of treaty benefits in inappropriate situations.
Action 7 - <i>Prevent the artificial avoidance of PE status</i>	Develop changes to the definition of permanent establishment (PE) to prevent the artificial avoidance of PE status in relation to BEPS, including via the use of commissionaire arrangements and the specific activity exemptions.
Action 8 - <i>Assure that transfer pricing outcomes are in line with value creation/intangibles</i>	Develop rules to prevent BEPS by moving intangibles among group members including: adopting a broader, clearer definition of intangibles, ensuring that profits associated with the transfer of intangibles are related to value creation, developing special rules for hard-to-value intangibles, and updating guidance on cost contribution arrangements.
Action 9 - <i>Assure that transfer pricing outcomes are in line with value creation/risks and capital</i>	Develop rules to prevent BEPS by transferring risks among, or allocating excessive capital to, group members including adopting rules to prevent inappropriate returns from accruing to entities solely on the basis of provision of capital or contractual assumption of risks.
Action 10 - <i>Assure that transfer pricing outcomes are in line with value creation/other high-risk transactions</i>	Develop rules to prevent BEPS by engaging in transactions that would not, or would occur only very rarely between third parties including adopting re-characterisation rules, clarifying the application of transfer pricing methods in global value chains, and protecting against payments such as management fees and head office expenses.
Action 11 - <i>Establish methodologies to collect and analyze data on BEPS and the actions to address it</i>	Develop recommendations on the indicators of the scale and economic impact of BEPS and ensure tools are available to assess effectiveness and impact of measures to address BEPS.

Action 12 - <i>Require taxpayers to disclose their aggressive tax planning arrangements</i>	Develop recommendations regarding the design of mandatory disclosure rules for aggressive or abusive transactions, arrangements, or structures, taking into consideration the administrative costs for tax administrations and businesses and drawing on experiences of the increasing number of countries that have such rules.
Action 13 - <i>Re-examine transfer pricing documentation</i>	Develop rules regarding transfer pricing documentation to enhance transparency, including a requirement that multinational entities provide all ‘relevant governments’ with information on global allocation of income, economic activity, and taxes paid among countries in accordance with a common template.
Action 14 - <i>Make dispute resolution mechanisms more effective</i>	Develop solutions to address obstacles that prevent countries from solving treaty-related disputes under Mutual Agreement Procedures (MAP), including the absence of arbitration provisions and denial of access to MAP in certain cases.
Action 15 - <i>Develop a multilateral instrument</i>	Analyse tax and public international law issues related to the development of a multilateral instrument to enable jurisdictions that wish to do so to implement BEPS measures and amend existing bilateral treaties.

The BEPS Action Plan may have a far reaching impact on international taxation and transfer pricing in China. The State Administration of Taxation (SAT) has kept a close watch on the development of the BEPS project and is contemplating major regulatory changes to adopt key elements of the BEPS study. In addition, even before the release of new BEPS-related circulars, local Chinese tax officials may refer to the BEPS report and the Action Plan as an unofficial source of guidance when evaluating the tax and transfer pricing aspects of cross-border transactions. It is still important for MNCs to keep the BEPS issues in mind when conducting international transactions.

Corporate Income Tax (“CIT”)

On 2 August 2013, SAT issued Announcement on Issues Concerning Annual Tax Filing for Transregional Branches Paying Corporate Income Tax collectively (SAT Announcement [2013] No. 44). The announcement clarifies that when conducting annual tax filing for year 2013 or the years after, transregional branches paying CIT collectively should use the format of “PRC Monthly (Quarterly) Corporate Income Tax Prepayment Filing Form (Category A)” (issued in SAT Announcement [2011] No. 64) to conduct the annual tax filing. If tax due (or tax return) required when conducting annual tax filing, branches should additionally submit “Distribution List for PRC Corporate Income Tax Collectively Payment Branches”.

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