



## I. Legal News

### MOF and SAT Implement Inclusive Tax Cuts for Small and Micro Sized Enterprises

The Ministry of Finance ("MOF") and the State Administration of Taxation ("SAT") jointly released the Circular on Implementing Inclusive Tax Relief for Small and Micro Sized Enterprises on January 17, 2019 (the "Circular"), in which a preferential tax cut policy has been implemented for three years (applicable for taxes paid from January 1, 2019 to December 31, 2021). We hereby highlight two major tax incentives mentioned in the Circular:

#### 1. Corporate income tax ("CIT") cut for "small and micro sized enterprises"

According to CIT Law, the general CIT rate is 25%; however, for small and micro sized enterprises ("SMSE"), a preferential tax policy with lower rate ("Preferential Rate") is applicable. Upon issuance of the Circular, more enterprises can be regarded as SMSE and the Preferential Rate has been reduced, specifically:

(1) Scope of SMSE is expanded. To qualify as a SMSE, three conditions shall be met simultaneously. According to the Circular, all these three conditions have been changed, as summarized below:

Three Conditions	Before the change	After the change
1. Annual Taxable income	≤ RMB 1 million yuan	≤ RMB 3 million yuan
2. Number of employees	For manufacturing enterprises: ≤ 100 employees Other enterprises: ≤ 80 employees	≤ 300 employees
3. Total assets	For manufacturing enterprises: ≤ RMB 30 million yuan Other enterprises: ≤ RMB 10 million yuan	≤ RMB 50 million yuan

#### (2) A progressive preferential CIT rate applies for SMSE

Previously, SMSE with annual taxable income less than RMB 1 million yuan were levied at an actual rate of 10%. Enterprises with annual taxable income more than RMB 1 million yuan were not regarded as SMSE, thus a general CIT rate of 25% applied.

Currently, a progressive Preferential Rate is implemented in line with the broader scope of SMSE. Specifically, for enterprises with annual taxable income less than RMB 1 million yuan, the CIT will be levied at a lower actual rate of 5%. Enterprises with annual taxable income over RMB 1 million yuan but less than RMB 3 million yuan will enjoy an actual rate of 10%. Enterprises with annual taxable income over RMB 3 million is not qualified as SMSE, thus a general CIT rate of 25% is applicable, see below a summarized table for reference:

Annual Taxable Income	Actual rate before change	Actual rate after change
Taxable income ≤ RMB 1 million yuan	10%	5%
RMB 1 million yuan < Taxable income ≤ RMB 3 million yuan	25%	10%
Taxable income > 3 million yuan	25%	25%

#### 2. More enterprises are entitled to value added tax ("VAT") exemption

The Circular stipulates that a small-scale VAT taxpayer will be exempted from VAT, provided that its monthly sales revenue is below RMB 100,000 yuan. In short, the VAT tax exemption threshold is raised from RMB 30,000 yuan per month to RMB 100,000 yuan per month, which enables more enterprises to enjoy the VAT tax exemption.

The Circular is a strong sign that the Chinese government aims to reduce enterprises' tax burden to stabilize the economy. It is estimated that China will cut the tax burden for small and micro sized enterprises by RMB 200 billion, covering more than 95% of enterprises.

(<http://www.chinatax.gov.cn/n810341/n810755/c4014090/content.html>)

### MOHURD Clarifies Foreign-invested Enterprises' Applications for the Survey Qualifications of Construction Projects

The Circular on Matters Concerning Applications of Foreign-invested Enterprises for the Survey Qualification of Construction Projects (the "Circular") was released by the General Office of the Ministry of Housing and Urban-rural Development ("MOHURD") with effective date as of January 10, 2019.

The Circular contains only one sentence but clearly addresses the ambiguous process for foreign-invested company to apply survey qualifications of construction project. It clearly states that survey business for construction projects does not fall in the scope of prohibited and restricted industries for foreign investment under the Special Administrative Measures for Foreign Investment Access (Negative List) (2018 Edition) ("2018 Foreign Negative List"). To follow up the principle of equal treatment to domestic and foreign investment where activities are not prohibited or restricted in 2018 Foreign Negative List, the Circular further stipulates that upon releasing of the Circular, applications for survey qualifications of construction project submitted by foreign invested enterprises (including newly-incorporated, restructured, reorganized, merged, or acquired foreign-invested enterprises) shall follow the same requirements as that of the domestic invested enterprises.

It is noteworthy that special qualifications still need to be obtained by the foreign invested enterprises before conducting the survey business for construction project. The Circular only stresses a unified market access of foreign and domestic investment on survey business for construction project.

([http://www.mohurd.gov.cn/wjfb/201901/t20190116\\_239197.html](http://www.mohurd.gov.cn/wjfb/201901/t20190116_239197.html))

## II. Case

### Tencent Awarded RMB 10 Million Yuan for Infringement of Its "WECHAT" Trademark

Recently, Beijing IP Court pronounced a judgment on a trademark infringement dispute in relation to "Wechat", which is the trademark of the most widely used messenger platform for Chinese people developed by telecommunications giant Tencent.

A Shenzhen company named Wechat Food Co., Ltd ("Shenzhen Company") incorporated in April 2018 operates food business using the logo "Wechat" on all its food products. Tencent filed a lawsuit on the grounds that Shenzhen Company has breached the exclusive right on Tencent well-known trademark "Wechat".

According to the judgement, Shenzhen Company is now forbidden to use characters "Wechat" in its company name and shall pay RMB 10 million yuan to Tencent as compensation. The court ruled in favor of Tencent on the following grounds:

1. Upon review, the trademark "Wechat" is regarded as a well-known trademark and its exclusive right shall be protected; Using the logo "Wechat" without authorization is a trademark infringement.

2. Using characters of a third party registered well-known trademark in its enterprise's name which mislead the public shall be sanctioned under PRC Anti-Unfair Competition Law. Consequently, Shenzhen Company shall fulfill formalities of change of enterprise name within 10 days of the judgement coming into force; and

3. The compensation RMB 10 million yuan is determined based on the actual revenue of the Shenzhen Company. It is noteworthy that according to PRC Trademark Law, if it is hard to determine the actual losses or actual profits, the court shall grant a compensation of no more than RMB 3 million yuan. However, from current practice and based on the newest interpretation from the Supreme People's Court, if evidence can be provided to show that "RMB 3 million yuan" is less than the "actual losses or actual profits", then the "actual losses or actual profits" shall prevail.

(<http://news.163.com/18/1216/10/E35100310001899N.html>)

## III. Hot Topic

### 55th Anniversary of the Establishment of Diplomatic Ties between China and France

The year 2019 marks the 55th anniversary of the establishment of diplomatic tie between China and France. On January 27<sup>th</sup>, 2019, president Xi Jinping and his French counterpart, Emmanuel Macron, pledged to work together to uphold multilateralism and promote bilateral ties for the global future. Xi and Macron expressed their willingness of promoting cooperation as permanent members of United Nations Security Council to safeguard the world peace and stability. The two countries will also hold hands to improve economic and cultural exchanges.

According to Chinese Ambassador Zhai Jun, the following figures occurred in 2018:

- Sino-French trade volume reached USD 60 billion;
- Around 2.3 million Chinese tourists traveled in France;
- More than 46,000 Chinese students are studying in France;
- More than 110,000 French students are learning Chinese.

In addition, in October last year, the China-France Oceanography Satellite was launched into space, marking the official launch of the "China-France Year of the environment". Zhai further expressed that China hopes to further develop the cooperation with France in the field of nuclear energy, aviation and aerospace, and strengthen ties in emerging areas of agricultural integration, digitalization, medicine and health, green development and artificial intelligence.

On January 24, 2019, Chinese State Councilor and Foreign Minister Wang Yi visited France for the 18th consultation of the coordinators for the China-France Strategic Dialogue. He stressed that China is willing to strengthen the alignment of respective policies and development strategies with France and improve cooperation in exploring the third-party market. With the further pursuit of "Belt and Road Initiative", the bilateral trade and investment will be improved. The implementation of the new legislations on foreign investment will also create a favorable environment for the development of the economic exchanges. Wang also complimented France for welcoming Chinese investment and for its commitment to open its market to Chinese investment without taking discriminatory measures.

([https://www.fmprc.gov.cn/web/dszlsjzt\\_673036/t1631562.shtml](https://www.fmprc.gov.cn/web/dszlsjzt_673036/t1631562.shtml)  
[http://www.qstheory.cn/international/2019-01/28/c\\_1124052062.htm](http://www.qstheory.cn/international/2019-01/28/c_1124052062.htm)  
[http://www.xinhuanet.com/2019-01/25/c\\_1124044513.htm](http://www.xinhuanet.com/2019-01/25/c_1124044513.htm))

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