



Legal News:

1. China Clarifies Punitive Damages for IP Infringement

On March 3, 2021, a judicial interpretation on the application of punitive damages in IP infringement cases was rolled out with immediate effect (the "Judicial Interpretation").

The Judicial Interpretation provides that plaintiff may apply for punitive damages where defendant ***infringes the IP rights with malicious intention under serious circumstances***.

(1) Malicious intention

According to the Judicial Interpretation, the following situations maybe preliminarily determined as the defendant is with malicious intention:

1. The defendant continues to commit the infringement after being notified or warned by the plaintiff or interested parties;
2. The defendant or his legal representative or manager is the legal representative, manager or actual controller of the plaintiff or interested parties;
3. There are relationships of labor, dispatch, cooperation, license, distribution, agency, representative or others between the defendant and the plaintiff or interested parties, **and** the infringed IP rights have been exposed to the defendant;
4. The defendant has business contacts with the plaintiff or interested parties, or has tried to negotiate to reach a contract, **and** the infringed IP rights have been exposed to the defendant;
5. The defendant has pirated or counterfeited the registered trademark.

(2) Serious circumstances

According to the Judicial Interpretation, the following circumstances maybe considered as "serious":

1. Committing same or similar infringements again after being punished by administrative penalty or court judgment;
2. Infringements of IP rights are its main business;
3. Forging, destroying or concealing evidence of infringement;
4. Refusing to abide by the injunction issued by court;
5. Gaining huge profits, or the IP rights owners suffering huge losses;
6. Infringement may endanger national security, public interest or personal health.

Should you have any inquiry about the Judicial Interpretation, please feel free to contact us at asiallians@asiallians.com.

(<http://www.court.gov.cn/zixun-xiangqing-288861.html>)

2. Hainan Released "Zero Tariff" Policy for the Production Equipment for Self-use Purposes

On March 4, 2021, "Zero Tariff" policy on production equipment for self-use purpose (the "Policy") was released with immediate effect. This Policy is line with the preferential policies and rules released before to build up Hainan as a new international center.

The Policy provides that:

First, self-used production equipment imported by enterprises that are registered in Hainan and have independent legal personality will be exempted from the following taxes¹:

- **tariff**
- **import value-added tax**
- **consumption tax**

Second, the qualified enterprises are subject to a list system managed by relevant PRC authorities.

Should you want to check if your equipment can be exempted from the above taxes, please feel free to contact us at asiallians@asiallians.com.

(http://gss.mof.gov.cn/gzdt/zhengcefabu/202103/t20210304_3665364.htm)

3. PRC Stamp Tax Law (Draft) Seeking for Public Comments

On March 1, 2021, PRC legislature released the Stamp Tax Law (Draft) to seeking for public comments. Previously, the stamp tax was governed by PRC Stamp Tax Interim Regulation (the "Interim Regulation"). Briefly, the Draft maintains major content of the Interim Regulation with slight revisions.

We highlight the following content of the Draft for your reference:

Unchanged Tax Rate	<ul style="list-style-type: none"> • lease contract: 1‰ of the rent • loan contracts: 0.005% of the loan amount • sales contracts: 0.003% of the sale amount of the movable property • technology contracts: 0.003% of the stipulated amount
Reduced Tax Rate	<ul style="list-style-type: none"> • processing contracts, construction engineering survey and design contracts and cargo transport contracts: reduced from 0.005% to 0.003%. • business account books: reduced from 0.005% to 0.0025%.
Abolished/exempted Tax Rate	<ul style="list-style-type: none"> • five original certificates including Real Estate Certificate, Business License, Trademark Registration Certificate, Patent Certificate and Land Use Certificate: previously attached with a 5-yuan stamp abolished. • digital contracts signed between e-commerce operators and customs: stamp tax exempted.

The public comment period will end on March 29, 2021. Should you have any comment or idea on the Draft that need to be heard, Asiallians is happy to assist you and you may contact us at asiallians@asiallians.com.

(<http://www.npc.gov.cn/flcaw/userIndex.html?lid=ff80808177e75f880177e7abe6fd014b>)

As always, Asiallians remains at your service and our teams are currently mobilized in all our offices in Mainland China, Hong Kong and Taipei.

¹ Except for the goods that laws or rules provide otherwise, goods prohibited from import by the State, and the equipment on the negative list attached to the Policy.

Feel free to contact asiallians@asiallians.com for more information.

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