

Broadening horizons

China Newsletter

Latest News on law, tax and business in China

Issue: January 2017 · www.roedl.de/www.roedl.com

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新增十城市享受服务外包税收优惠政策

Frances Gu, Rödl & Partner 中国上海

服务外包示范城市

2016年10月12日，财政部、国家税务总局等五部委共同下发通知“财税[2016]108号文”，将沈阳、长春、南通、镇江、福州（含平潭综合实验区）、南宁、乌鲁木齐、青岛、宁波和郑州纳入适用技术先进型服务企业所得税政策中国服务外包示范城市。作为对现有21个中国服务外包示范城市（包括：北京、天津、上海、重庆、大连、深圳、广州、武汉、哈尔滨、成都、南京、西安、济南、杭州、合肥、南昌、长沙、大庆、苏州、无锡、厦门）的补充，新规再次表明中国正在进一步推动技术先进型离岸外包服务导向性企业的发展，促进企业技术创新和技术服务能力的提升。

税收优惠政策

2016年1月1日到2018年12月31日期间，技术先进型服务企业可享受以下企业所得税优惠政策：

- 减按15%的税率征收企业所得税（一般税率为25%）；
- 企业发生的职工教育经费支出，不超过工资薪金总额8%的部分，准予在计算应纳税所得额时扣除（一般扣除比例为2.5%）。

技术先进型服务企业认定要求

享受上述企业所得税优惠政策的技术先进型服务企业必须同时符合以下条件：

- 从事符合规定的一种或多种技术先进型服务业务（即信息技术外包服务、技术性业务流程外包服务和技术性知识流程外包服务），采用先进技术或具备较强的研发能力；

New Cities Allow to Enjoy Tax Incentives for Service Outsourcing

Frances Gu, Rödl & Partner Shanghai, China

Service Outsourcing Pilot Cities

On October 12, the Ministry of Finance, the State Administration of Taxation and three other Chinese authorities jointly issued an Announcement “Cai Shui [2016] No. 108” extending the tax incentives for service outsourcing to companies incorporated also in Shenyang, Changchun, Nantong, Zhenjiang, Fuzhou (including the Pingtan comprehensive experimental zone), Nanning, Urumchi, Tsingtao, Ningbo and Zhengzhou. As a supplementary to current 21 Chinese service outsourcing pilot cities including Beijing, Tianjin, Shanghai, Chongqing, Dalian, Shenzhen, Guangzhou, Wuhan, Harbin, Chengdu, Nanjing, Xi'an, Jinan, Hangzhou, Hefei, Nanchang, Changsha, Daqing, Suzhou, Wuxi and Xiamen, the new Announcement demonstrates again that China is further promoting the development of Offshore Outsourcing Service Orientated Advanced Technology Service Enterprises (“ATSE”) and improving the technological innovation and technological service capability of enterprises.

Tax Incentives

From January 1, 2016 to December 31, 2018, the qualified ATSEs are offered with following preferential policies for Corporate Income Tax (“CIT”):

- A reduced CIT rate of 15% (general tax rate is 25%);
- Educational expenses of employees which do not exceed 8% of its total salaries are allowed to be deducted when calculating taxable income for CIT (general deduction is 2.5%).

ATSE Recognition Requirements

ATSE that enjoys the above mentioned preferential CIT policies must meet all following requirements:

- The enterprise engages in one or more stipulated advanced technology outsourcing services (i.e. Information Technology Outsourcing, Business Process Outsourcing and Knowledge Process Outsourcing) and adopts advanced technology or has relatively strong research and development capacity;

- 企业的注册地及生产经营地在示范城市内；
 - 企业具有法人资格；
 - 具有大专以上学历的员工占企业职工总数的50%以上；
 - 从事符合规定的技术先进型服务业务取得的收入占企业当年总收入的50%以上；
 - 从事离岸服务外包业务取得的收入不低于企业当年总收入的35%。
- The registration and production or business place of the enterprise is located in a pilot city;
 - The enterprise has qualified as a legal person;
 - The employees with a junior college degree or above account for more than 50% of the total employees of the enterprise;
 - The income from the stipulated advanced technology services accounts for more than 50% of the total incomes of the enterprise in the current year; and
 - The income from the offshore service outsourcing business is not less than 35% of the total incomes of the enterprise in the current year.

满足以上所有条件的企业需准备相关资料，在网上进行申报提出申请，并向相关科技部门提交纸质材料以供审核及评审。部门审核和专家评审通过后，企业经过网上公示后无异议的，将会授予相关证书，并可以在税务局进行税收优惠申请备案。企业在企业所得税预缴申报和汇算清缴时进行相关税收优惠申报。

When meeting all above mentioned requirements, enterprise shall prepare relevant documents to make online application firstly and then to submit the paper material to relevant science and technology department for further examination and review. After the department examination and expert review, if there is no objection during publicity period, the enterprise will be granted with relevant certificate and can apply the tax benefits at tax authorities. Enterprise shall declare the reduced CIT and allowed extra deductible educational expenses during quarterly pre-declaration and/or CIT annual filing.

我们的观察

新文的发布使得有更多的技术先进型离岸外包服务导向性企业能享受企业所得税政策。若企业位于以上列举的新示范城市内，我们建议企业应及时了解相关认定政策，尽快进行自我审阅，以确定是否满足相关认定要求，并及时进行相关的备案事宜从而享受税收优惠政策。

Our Observation

The newly released regulation allows more offshore outsourcing service oriented ATSEs to enjoy CIT preferential policies. If enterprise is located in above mentioned newly added pilot cities, it is recommended for the relevant enterprises to be timely updated with the recognition requirement and to implement a self-check as soon as possible, in order to determine whether they can meet the recognition criteria and conduct the relevant filing procedures in a timely manner so as to enjoy the eligible tax incentives.

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中国税务局发布国际税收遵从管理措施

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近年来，中国非常积极地参与到 BEPS 行动之中。随着去年 OECD 发布了最终版 BEPS 报告，中国也随之出台了若干本土法规/规定，作为对 OECD 所提倡的 BEPS 行动回应。今年年中，江苏省税务局再一次发布了《2016-2018 年度国际税收遵从管理规划》，表明了其对最新的国际税收问题及国家税务局最新要求的看法，具体细则如下：

转让定价问题的观点

- 考虑中国的地域特殊因素 (“LSA”) 对定价和利润分配的贡献 (例如：优良的公共基础设施，巨大的市场需求，高附加值活动的成本节约)；
- 动态审视在华子公司经营活动的变化，考虑其职能风险调整的相应补偿；
- 业务重组应有公司内部完整决策程序相佐证，应有实质性的功能、风险或资产转移；
- 在项目管理、风险承担、资产使用、重要人员投入方面，本土化研发或合同研发服务在无形资产价值形成中发挥重要作用，因此不能仅按成本加成率予以回报，而应对其予以充分补偿；
- 考虑基于完整价值链分析的转让定价方法，按照核心要素指标（如资产、销售、费用、成本、人工等）将价值链上的总利润进行分配。

风险预警

- 避免激进的税收筹划，例如在低税地设立壳公司，设立多层境外持股架构或通过拆分合同规避

Tax Authority in China Issues Compliance Plan on International Tax Administration

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China has been proactively participating in the BEPS actions in recent years. With the issuance of the final BEPS reports by OECD last year, China has also promulgated some domestic laws/regulations to respond to the action plans promoted by OECD. By mid of this year, Jiangsu tax authority has again issued 2016-2018 Compliance Plan on International Tax Administration, commenting its views on the latest changes of international taxation and new requirements of the SAT. The key points are summarized as follows:

Views on Transfer Pricing Policy Considerations

- Consider the Location Special Advantages (“LSA”) of China (e.g. well-established infrastructure, market premium/demand, location saving for high value-added functions) in price setting/profit allocation;
- Examining subsidiaries in China dynamically for the changes of business activities, and considering compensation when adjusting functions and risks;
- Business restructuring should be based on business purpose, be supported by internal decision-making procedures and have substantive transfer of functions, risks or assets;
- Localized R&D activities or even contract R&D service provision does play significant roles for the establishment of the intangible assets in view of the detailed project management, risk assumption, assets and important personnel resource devotion, and therefore should also participate in the profit sharing instead of merely remunerated by cost plus a routine mark-up as other routine service provision;
- Consider the pricing setting based on the overall value chain analysis, allocating the overall profit by also referring to the key indexes contributing to the value creation such as assets deployed, sales revenues, expenses/costs incurred, staff employed and etc.

Risk Warning

- Avoid aggressive tax planning, such as setting up a shell company in a low tax area, setting up a

常设机构的认定；

■ 避免出现高风险的错配：

- 集团利润趋势与中国成员企业利润趋势不一致；
- 集团社会形象和税收贡献不一致；
- 价值贡献和利润分配不一致；
- 高新技术企业定位与税收表现不一致；
- 经营规模变化与经营效益变化不一致；
- 投入与产出不一致，比如持续支付高额特许权使用费，但经营效益不佳；

合规性指南

- 重视及时完成法定的申报工作，（例如：转让定价报告，对外支付合同备案和商业重组报告）同时注意提高转让定价同期资料准备的质量，因为它将是企业风险等级评定的重要依据；
- 充分利用《多边税收征管互助公约》、《金融账户涉税信息自动交换标准》（CRS）和《海外账户税收合规法案》（FATCA）以规范对境外交易的管理；
- 建立全面的数据分析机制，整合企业申报信息，从银行、工商局和海关等获取的信息以及第三方商务信息，以更好地监控纳税人的税务风险。

我们的观点

继《2014-2015 年度国际税收遵从管理规划》后，江苏国税局此次再度发布了 2016-2018 年的管理规划，与前一版本相比，这次的管理规划更符合目前国际税收形势的最新变化。它也体现了中国税务机关积极迎接后 BEPS 时代的态度和他们将要采取的措施。随着国际信息交流的愈发频繁，以及当前税务机关提倡的大数据税务风险管控机制的落地，税收遵从将会变得愈发重要，而激进的税收筹划也会产生更大风险。我

multi-layer overseas shareholding structure or evading permanent establishment via contract split;

■ Avoid mismatches with high tax risk:

- Mismatch between the profit trend of the group and its members in China;
- Mismatch between the group's social image and its tax contribution;
- Mismatch between value contribution (key production/R&D centers or key market) and profit allocation;
- Mismatch between the status of hi-tech enterprise and its performance/significant license fee payment;
- Mismatch between the expansion of business scale and the unfavorable business performance;
- Mismatch between the input and the output such as continuous significant license fee payment with poor business performance.

Compliance Guidance

- Include both the timely completion of the various legal reporting/filing obligation (e.g. TP reporting, overseas payment contract filing and business restructuring reporting) as well as the quality of the transfer pricing documentation into the tax risk rating of the taxpayers;
- Fully utilize the information exchange via Mutual Administrative Assistance in Tax Matters, CRS and FATCA so as to standardize the regulation on off-shore transactions;
- Establish the comprehensive data analysis mechanism with the combination of the tax filing information, information exchanged from bank, AIC, customs authority as well as commercial information extracted from third party resources so as to better monitor the tax risks of the taxpayers.

Our Observations

Following its announcement of Compliance Plan 2014-2015, Jiangsu SAT once again issued the Plan for years 2016-2018. Compared with the last version, this announcement reflects the latest changes of international taxation occurred in recent years as promoted by OECD's BEPS actions. This has shown the Chinese tax authority's attitudes to be well prepared for the post-BEPS era and the actions they are going to take. With more and more international information exchange as

们建议企业多加关注公告中的建议，以避免和减少后 BEPS 时代可能会带来的税收风险。

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well as the current “big data” analysis advocated by the tax authority in tax risk monitoring mechanism, tax compliance will become more important in the future and aggressive tax planning is of more risks. We recommend that the enterprises pay attention to the suggestions in the announcement for an internal tax risk check so as to avoid and mitigate the potential tax risks might come from the post-BEPS era.

中国修订海关稽查条例

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自 1997 年以来，原海关稽查条例实施了近 20 年，然而，随着中国对外贸易持续快速发展，海关监管业务量大幅增长，旧条例已经不能很好地适应海关改革和发展的需要。因此，国务院于 2016 年 6 月 19 日颁布了重新修订的《中华人民共和国海关稽查条例》（“国务院令 第 670 号”），并已于 10 月 1 日起施行，与之配套的《实施办法》也于 11 月 1 日正式实施。

比较新旧法规，主要变化如下：

明确海关稽查定位

根据新条例，海关稽查期为“自进出口货物放行之日起 3 年内或者在保税货物、减免税进口货物的海关监管期限内及其后的 3 年内”。“其后的 3 年内”作为稽查期延展，使得企业的风险期间同时延长。另外，法规明确了海关稽查的对象，进一步限定了海关的稽查范围。

China Revised the Regulations on Customs Audit

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The previous Customs Auditing Regulation had been implemented for nearly 20 years since 1997. However, with the rapid development of China's overseas trade and the huge growth of customs audit volume, the previous Regulation cannot well meet the demands of customs reform and development. Thus, the State Council issued the Revised Regulation on Customs Audit of the People's Republic of China (“Order of the State Council No. 670”) on June 19, 2016 which has taken effect since October 1 and its supporting Implementation Measures have also been effective since November 1.

Comparing to the previous regulations, the major changes in the revised version are summarized as follows:

Clarify the Customs Audit Scope

According to the revised regulation, the customs auditing period should be “within three years from customs clearance of imports and exports or within the customs supervision period for bonded goods, tax-free and tax-reduced imports and exports and **the three-year period thereafter**”. As an extension of the auditing period, the “three-year period thereafter” will also extend the risk period of enterprises. In the meantime, the regulation has clearly stipulated the target of

增加主动披露制度

进出口企业、单位主动向海关书面报告其违反海关监管规定的行为并接受海关处理的，海关可以认定有关企业、单位主动披露。对主动披露的企业，违反海关监管规定的，海关应当从轻或者减轻行政处罚。对主动披露并补缴税款的，海关可以减免滞纳金。

引入中介机构内容

海关可以委托会计、税务等方面的专业机构做出专业结论。被稽查人委托专业机构做出的专业结论，可以作为海关稽查的参考依据。

我们的观察

作为对新规的应对，企业应注意以下几点：

- 由于稽查期限的延展，相应延长了进出口资料保管的期限。企业应加强内部档案管理，避免因单证管理原因影响海关稽查；
- “主动披露”正式被包含在新规中，旨在鼓励企业主动纠正发现的错误。因此，企业应定期就其海关事项的合规性进行内部审核，并通过“主动披露”纠正不合规之处，以达到风险最小化；
- 作为独立的第三方，专业的中介机构能够提供客观公正的意见。企业可以善用这项规定，以更好应对海关稽查。

customs audit, which further limits the customs auditing scope.

Adopt the Active Disclosure Method

Where an importer or exporter actively reports its violation of the regulatory provisions of the customs in writing to the Customs and accepts the handling by the Customs, the Customs may deem that such importer or exporter makes active disclosure. For these enterprises, the Customs shall impose a lighter or mitigated administrative penalty on it. The Customs may deduct or exempt late fines for those importers or exporters that make active disclosure and make up for taxes.

Introduce the Third-party Agent

When conducting an audit, the Customs may entrust professional agencies with the task of arriving at professional conclusions concerning accounting, tax and other related issues. The professional conclusions drawn by the agencies entrusted by a person under audit in respect of accounting, tax and other areas may be used as reference for Customs audit.

Our Observation

As reply to the revised regulations, enterprises should pay attention to the following points:

- Due to the extension of audit period, the maintenance period of the vouchers, materials and documents shall also be extended. Enterprises shall strengthen their record maintenance to avoid any effect on the Customs audit due to the document management;
- “Self-disclosure” has been formally included into new regulation which aims to encourage enterprises to actively make corrections noticed. Enterprise therefore is recommended to conduct periodic internal review on its customs compliance and actively correct the incompliance noticed during the self-check so as to minimize the risks of its operation;
- The professional firms as independent third party can provide objective and fair opinion in the process of customs audit. Enterprises can take advantage of this regulation in response to the customs audit.

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跨境资本流动的规定更加严格：关于其进一步发展的影响和评价

Xiaomei Fu and Jiawei Wang, Rödl & Partner 中国上海

人民币对美元汇率的日趋走低以及尖锐的资本逃离问题促使中国央行（“PBOC”）以及其所属的外汇管理机构（“SAFE”），采取了一系列针对向境外付汇和资金转移的监管措施。外国投资者视其为强烈的不确定事项，担心中国由此加强对资本流通的限制。当然，我们目前并没有看到真正意义上的对外国投资者在当地的运营产生持续性影响的资本流通管制。

对现金交易的报告义务调整

12 月末，央行在现有的 2006 版关于金融机构大额交易和可疑交易报告义务的管理办法的基础上进一步修订，并重新发布将自 2017 年 7 月 1 日生效的新版本。

新规定将金融机构客户中现金缴存和现金支取的报告门槛从 20 万人民币降低至 5 万人民币。负有报告义务的机构范围将由商业银行扩展至支付机构，例如支付宝或基金公司。原则上提供给个人的每人每年 5 万以及每天交易限额 1 万美金的外汇兑换限额仍保持不变。但中国客户未来在购汇时需要填写更加繁琐的表格，并确保该交易不被用于购置境外不动产，从事金融投资或者用于其它禁止的目的。

Tighter Regulations on Cross-Border Capital Movements – Effects and Evaluations of the Latest Developments

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The ongoing weakness of the Chinese Yuan towards the US dollar and an increasing problem of capital exodus out of China have moved the People's Bank of China (PBOC) and the related State Administration of Foreign Exchange (SAFE) to introduce a number of measures for the control and monitoring of currency and capital movements abroad.

Adjustment of Reporting Requirements for Cash Transactions

In late December the PBOC had already revised and reissued a set of regulations on reporting requirements for financial institutions for high volume and suspicious transactions which will enter into force on 1 July 2017.

These new regulations will reduce the threshold which requires financial institutions to report on cash transactions from deposits or withdrawals of 200,000 RMB or above to 50,000 RMB or above. Further, the scope of the regulations will be extended to not only cover commercial credit institutions, but also to apply to other financial services providers such as Alipay or investment funds. The current quota on foreign exchange for individuals in the equivalent value of

我们估计，目前这些措施并没有限制资本的流动，更多是为了加强管控，禁止非法外汇交易。其重点在于遏制以在境外购置不动产为目的的资本外流，富裕的中国人在过去几年大力投入到该领域。此外，开展这些措施，也是意图加强监管并阻碍洗钱活动和为恐怖主义融资。

通过银行的监管以及对资本流通的影响

除上述提及的管理办法外，中国央行已在 11 月末通过不成文的方式，指导商业银行对资本外流采取更加严厉的管控。目前很难对该指导的影响作出评判。实质上央行作出指导，要求银行对于 500 万美元等值及以上的外汇交易应上报外汇管理局，并可能需要会同央行和外汇管理局进行约谈。该指导可能无论对于中国企业亦或是外国公司，都增大了其以人民币或外币向境外转账的难度。

它可以基本视为在上海自由贸易区尝试的资本自由流通的一种倒退。同样，中国的外资公司向其境外母公司的利润汇回或股利分配都变得不便。

在实践中，目前可以确定的是，该措施首先针对的是中国企业，因其在近几个月内向香港的离岸市场不断汇出大额的人民币，而该市场并不限制兑换美金的数额。基于缺少明确的细则，一些银行目前更倾向于暂停办理存在风险的大额交易，这也在实践中引发了更多的不安。

中国的利益以及展望

鉴于央行此次非正式的指导，我们可以看到，新规定的目的不在于限制外资企业的常规经营活动，而更多地是希望将伪装的、通过中国向境外资本转账的资本逃离加以禁止。目前我们还看不出中国存在阻碍外资

50,000 USD per calendar year or 10,000 USD per transaction will not be altered. However, Chinese customers will need to complete more extensive documentation for each foreign currency transaction and confirm that transactions are not for the purpose of purchasing real estate overseas, financial investments or other purposes which are not permitted.

In our view, at this stage the measures do not represent a further constraint on the movement of capital, but rather seem to be aimed to prevent or severely monitor those transactions which are already considered to be illegal. The focus is on the restriction of exporting currency for real estate investments overseas, after wealthy Chinese were heavily engaged in this field over the past years. Furthermore, the measures aim to strengthen monitor and prevent money laundering activities and financing of terrorism.

Control by Commercial Credit Institutions and Effects on Capital Movement

Further to the above mentioned formal regulations catalogue the PBOC already announced in late November further informal directions to commercial credit institutions with regard to tighter controls of capital movements. The effects of these directions are difficult to evaluate. However, with regard to content, the PBOC instructed that SAFE needs to be notified about any transfer of foreign exchange with a value of 5 Mio USD or above and that possibly also a consultation with PBOC and SAFE might become necessary. The direction has the potential of making transfers of foreign exchange in RMB (Yuan) or foreign currencies more difficult for Chinese or foreign companies.

In principle, this means a step backwards from the liberties for example granted for capital movements within the Shanghai Free Trade Zone and refunds of profits and payouts of dividends of Chinese companies to their parent companies overseas will become more complicated.

However, it can also be said that at this stage and in practice the primary focus is on Chinese companies, which is caused by transfers of large volumes of RMB to the Hong Kong offshore market where funds can be converted into US Dollar without any restriction. Due to a lack of clear regulation a tendency currently exists with some banks to wait with the execution of certain transfers, bearing the risk that further turmoil might be caused in commercial practice.

Chinese Interests and Outlook

Concerning the informal directions by the PBOC it needs to be taken into account that it seems not to be the aim of the new regulations to hinder regular commercial practice of foreign companies in China, but rather to prevent a hidden exodus of capital

China Newsletter

企业资本流通的意图。相反可以确定的是，中国将继续激发外商投资力度以及资本市场的参与度，促进资本流入中国。例如，近几年中国进一步在多个领域放开外商投资的准入门槛。

根据我们目前的判断，随着汇率预期的稳定，中国的外资企业的对外汇款应该将很快回归常态。我们将进一步关注这个主题，并报道其最新的发展。

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through Chinese transfers of money overseas. An interest of China to restrict capital movements of foreign companies is not apparent at this stage. To the contrary, it is noticeable that China continues to encourage foreign direct investment and engagement in the stock markets, particularly to generate movement of capital to China. This is evidenced for example by the further liberalization of the conditions to market access for foreign investors through the opening of various sectors over the past years.

Currently, we consider that with a stabilization of the currency exchange expectations there will be a return to the known modalities for international money transfers by foreign companies in China. We will continue to monitor the progress and will advise on further any developments.

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中国引入新统一的工作许可程序

Xiaomei Fu, Rödl & Partner 中国上海

2016年9月9日，国家外汇专家局（简称SAFEA）在天津的工作座谈会上宣布在九个试点区域部署“外国人来华工作许可制度试点工作”，进一步破除现行外国人工作管理体制中存在的职能交叉，沟通不善等障碍。这九个试点区域是北京、上海、天津、安徽、广州、河北、山东、四川和宁夏。审批时间的大幅减少，归因于不同相关职能部门的职权整合以及引入先进的网络平台用作信息交换。

New Unified Work Permit Procedure in China

Xiaomei Fu, Rödl & Partner Shanghai, China

On September 9, 2016, the State Administration of Foreign Experts Affairs (SAFEA) held a work conference in Tianjin and announced the implementation of the “Pilot Program of Work Permit System for foreigners working in China” in nine pilot regions. With the introduction of this new system, it aims to break the administrative barriers caused by crossed responsibility of various authorities and inefficient communication arising from this. Beijing, Shanghai, Tianjin, Anhui, Guangdong, Hebei, Shandong, Sichuan and Ningxia will be the initial pilot areas. The time spent on approval procedures is to be shortened substantially, which is attributed to the integration of powers from different relevant authorities and usage of advanced

特定区域的试点工作自 2016 年 10 月 1 日起开始。而中央政府决定在 2017 年 4 月 1 日在全国范围内启用新的外国人来华工作许可制度。在试点期间，试点区域的地方政府将采取以下措施来加速改革。

一站式服务

当前的外国人就业制度是一个二元制的制度。对于和中国公司建立普通劳动关系的外国员工，公司需要向人力资源与社会保障局的地方分支机构(简称“劳动局”)申请外国人就业许可证，此后员工才可以在中国驻外的中国使领馆申请 Z 签证，一种限定工作为目的的签证。在入境中国后，外国员工必须本人在劳动局申请外国人就业证（一种护照大小可携带的证件），此时劳动局会第二次核查资料。而外国人准备书面申请材料的时间以及各个机关审核材料所花费的时间通常总共需要 2-3 个月，各地有所差异。

对于来华的外国专家而言，情况略有不同。在外国专家入境中国前后，当地的外国专家局的分支机构（外专局）负责类似的审批工作。外国专家来华工作许可证，R 签证以及外国人专家证将被相应地被使用。当然，费时的流程同样为人诟病。

根据新的制度，劳动局和外专局会让渡上述的审批权限给一个受劳动局或是外专局一方单独领导的内部机构。该机构负责接收所有申请，并为一般外国员工和专家签发统一的《外国人工作许可通知》。他们据此申请合适的签证种类。在入境中国后，这家机构负责再次核查资料，并签发统一的《外国人工作许可证》。

可以预料到，随着新制度的引入，该机构用于储存外国人信息的数据库可能被进一步开发，帮助公安部以及地方公安局的数据库相互连接，用于信息交换。

network platforms for information exchange.

The pilot program in selected regions starts from October 1, 2016. However, the central government decided to roll out the new work permit system for foreigners nationwide on April 1, 2017. During the pilot, the local governments in the pilot regions will take the following measures to accelerate the reform.

One-Stop Service

The current foreign employment system in China is a dual system. For alien employees with a general employment within a Chinese company, the company needs to apply for an employment license at a local branch of the Ministry of Human Resources and Social Security (“Labor Bureau”) before this employee can apply for a Z-visa, i.e. specific visa for working purpose, at a Chinese Embassy/Consulate outside of China. After entry into China, the alien employee is required to apply for a work permit (a portable passport sized document) in person at the labor bureau, at which time the labor bureau shall examine and verify the documents again. The time spent on the preparation of a written application by the alien and the respective approval by the authorities usually takes 2 to 3 months in total, widely ranged in various locations.

The circumstances for foreign experts coming to China are slightly different. Instead of the labor bureau, the local branch of foreign experts’ affairs (“foreign expert bureau”) is in charge of a similar approval before and after the entry of the foreign expert into China. The Foreign Expert Employment License and R-visa as well as the Foreign Expert Permit will be used instead. However, the time-consuming procedure is also subject to criticism.

According to the new system, the labor bureau and foreign expert bureau will transfer abovementioned approval powers into a new internal department, which will be under the sole management and supervision of either the labor bureau or the foreign expert bureau. This internal department is responsible for receiving all the applications and for issuing the unified “Alien Employment License Notice” to both normal foreigners and experts. They can subsequently apply for the applicable type of visa. After they enter into China, this internal department is responsible for verifying the application again and issuing the unified “Alien Work Permit”.

It could be expected that with the introduction of the new system, the database used by this department for storage of the expats’ information may be further developed in order to connect with the database of the Ministry of Public Security and its local bureau (“PSB”) for information exchange.

更少的纸质材料，更多在线申请

当前的申请制度因为依托于递交纸质材料而又缺乏统一格式而广为诟病。在实际操作中，审批者对于一些材料中的特定用词或翻译特别苛刻，比如简历、工作经历证明、学历证书等。申请者在准备材料的那一刻并无法预测潜在的来自审批者的质疑。即便外部顾问可以凭借经验给予申请者建议，使其关注这些细节，但外界还是高度期望出现一个更加透明而且统一的审批程序。

新制度已确定删除了递交个人简历和工作许可申请书的要求。当一部分申请材料可以通过互联网上传，着实为申请者带来了许多便利。但亟需阐明的是，当那些私人化的文档与严苛的格式要求不符时，是否会相较于以往更早地被政府部门指出，这样申请者才有充裕时间弥补瑕疵。

全国通用的识别号码

受外籍员工争议的还包括在中国不同城市之间转移劳动关系。不仅在劳动部门还需在其他部门办理繁琐手续。新制度可以通过在工作许可证上印发的唯一身份识别号码来解决这个问题，该号码会授予每一个工作许可证持有人，而且终身有效。

外籍雇员的分级

根据现行的制度，通常来说，只有具有两年工作经验的外国人可以许可在中国工作。许可期限每次一年至五年不等。在到期前，外籍员工需要向原审批机关申请延期。实务中，官员倾向于签发一年期的许可，避免缺少控制带来的风险。

新制度将引入“工作指导目录”、“计点积分”以及“市场需求测试”等通用工具，实质性限制审批者在决定每个工作许可的期限时的裁量权。这些可被视为某种客观和透明的对申请者的评价标准，而申请者依照学历背景，年龄，工资水平和工作经验等而获得的积分并被分成A、B和C三类。

Less Paper and More Online-Application

The current application system is being criticized because most of the submitted documents are paper-based but not subject to a unified format. In practice, the officers become very hypercritical about certain wordings or translations in the documents, such as the resume, working certificate, academic degrees etc. The applicant cannot forecast the potential challenge by the approver at the moment when they are preparing. Even if an external consultant could advise the applicant to focus on details per experience, it is still highly expected to have a more transparent and unified approval procedure.

The new system guarantees to remove the submission requirement on personal CVs and the application letter for the work permit. It brings much convenience to the applicant in the event that some application documents might be uploaded via internet. But it is still unclear whether those personalized documents with a defect, which are not in compliance with the strict format requirements, could be pointed out by the authorities earlier than before, so that the applicant can catch enough time to remedy the defect.

Unique ID-Number around China

It is highly criticized by expats in the case of labor transfer between different cities in China. Miscellaneous formalities shall be handled at labor bureaus and other authorities. The new system can solve this issue from a labor perspective when a unique ID-number on the work permit will be granted to each permit-holder which stays in effect for a lifetime.

Tiered Classification of Expats

According to the current system, generally speaking, only the foreigner who can prove two years of working experience could be admitted to work in China. The term of permit ranges from 1 to 5 years each time. Before the expiry of the term, the expat shall apply for renewal at the original examining and approval authority. In practice, the officer prefers to issue a one-year permit in most cases to avoid some risks resulting from less control.

The new system will introduce some internationally used tools such as the “Job Guidance Catalogue” and the “Points-Based Classification System” as well as the “Market Demand Test”, which substantively restricts the discretion of the approver on determining the period of each work permit. It could be viewed as a kind of objective and transparent criterion for evaluating the applicant, who would be classified in the groups A, B, C in accordance with points gained by them base on their education background, age, salary level and work experience etc.

期间，上海外国专家局发布了具体细则，详细标准请参见[我们的网页](#)。

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Recently, the Shanghai Administration of Foreign Experts Affairs (“SHAFEA”) released further details. Please follow [the link for more information](#).

商标登记简化新举措

Bei Li, Rödl & Partner 中国上海

继《委托地方工商和市场监管部门受理商标注册申请暂行规定》（工商标字[2016]168号）自2016年9月1日开始施行后，国家工商商标总局同意第一批13个单位设立商标注册申请受理窗口，受理窗口负责指定区域内商标注册申请受理、规费收缴，并接收、审核商标注册申请文件，对符合受理条件的商标注册申请确定申请日。受理窗口同时还代发商标注册证，提供查询和咨询等服务。11月1日，以下13个商标注册申请受理窗口全面启动运行：

- 黑龙江省：哈尔滨市市场监督管理局
- 江苏省：南京市工商局、苏州市工商局
- 浙江省：宁波市市场监督管理局
- 山东省：济南市工商局、青岛市工商局、济宁市工商局

New Regulation regarding Facilitating Trademark Application

Bei Li, Rödl & Partner Shanghai, China

After the new regulation “Interim Provisions of Entrusting Local Administrative Departments for Industry and Commerce and Market Supervision to Accept Applications of Trademark Registration” (Notice Gong Shang Biao Zi [2016] No. 168) has been implemented as from September 1, 2016, the State Administration of Industry and Commerce (SAIC) recently set up the first batch of 13 acceptance windows for trademark registration applications. These acceptance windows are responsible for accepting trademark registration applications and collecting regulatory fees within their specified areas. They are also responsible for accepting and reviewing application documents for trademark registration and determining the date of application for registrations of trademarks qualified in conditions for acceptance. Moreover, they also grant trademark certificates on behalf of the SAIC and offer services like query and consultation. The first batch of 13 acceptance windows for trademark registration applications were all put into operation on Nov. 1, which are opened and structured as follows:

- Heilongjiang Province: the Market Supervision and Administration Bureau of Harbin
- Jiangsu Province: Administration of Industry and Commerce of Nanjing and of Suzhou
- Zhejiang Province: the Market Supervision and Administration Bureau of Ningbo
- Shandong Province: Administration of Industry and Commerce of Jinan, of Qingdao and of

- 河南省：洛阳市工商局
- 湖北省：湖北省工商局
- 湖南省：长沙市工商局、怀化市工商局
- 广西壮族自治区：广西壮族自治区工商局

- 四川省：成都市工商局

这一举措为申请人就近办理商标注册申请业务提供了便利。

目前，办理商标注册申请有三种方式选择：

- 一是到所在地商标受理处（受理窗口）办理；
- 二是到工商总局商标注册大厅办理；
- 三是委托依法设立的商标代理机构办理。

但是根据商标法，外国人或者外国企业在中国申请商标注册和办理其他商标事宜的，仍应当委托依法设立的商标代理机构办理。下一步，根据《工商总局关于大力推进商标注册便利化改革的意见》部署，2017年申请人还可通过互联网直接办理商标注册申请业务。关于互联网申请注册商标的具体法规，我们拭目以待国家工商总局的进一步举措。

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Jining

- Henan Province: Administration of Industry and Commerce of Luoyang
- Hubei Province: Administration of Industry and Commerce of Hubei Province
- Hunan Province: Administration of Industry and Commerce of Changsha and of Huaihua
- Guangxi Zhuang Autonomous Region: Administration of Industry and Commerce of Guangxi Zhuang Autonomous Region
- Sichuan Province: Administration of Industry and Commerce of Chengdu

This measure greatly facilitates applicants to apply for registering trademarks at the nearest trademark application acceptance counters.

At present the applicants for trademark registration may submit their applications in three ways:

- in person at their respective local trademark application acceptance counters or;
- at the registration lobby of the Trademark Office or;
- by entrusting a qualified trademark agency.

However, according to the Chinese Trademark Law, any foreign person or foreign enterprise intending to apply for the registration of a trademark or for any other matters concerning a trademark in China shall still entrust a qualified trademark agency. The next step, as expected by the Opinions of the State Administration for Industry and Commerce on Making Vigorous Reform Efforts to Facilitate Trademark Registration, from 2017 onwards, applicants for trademark registration may submit their applications via the Internet. In this regard we have to wait and see the further initiatives of SAIC.

最近出台的重要法规回顾

国税总局按信用等级对增值税发票实行分类管理

近日，国税总局发布 2016 年第 71 号公告，按照纳税信用等级对增值税发票使用实行分类管理，并自 12 月 1 日实施。纳税信用 A 级的纳税人可一次领取不超过 3 个月的增值税发票用量，纳税信用 B 级的纳税人可一次领取不超过 2 个月的增值税发票用量。同时，将取消增值税发票认证的纳税人范围由纳税信用 A 级、B 级的增值税一般纳税人扩大到纳税信用 C 级的增值税一般纳税人。

中国环保税正式面世

2016 年 12 月 25 日《中华人民共和国环境保护税法》通过，标志着中国环境保护税正式面世，将自 2018 年 1 月 1 日起施行。根据《环保税法》，直接向环境排放应税污染物的企业事业单位和其他生产经营者为纳税人，大气污染物、水污染物、固体废物和噪声为应税污染物。

Recent Important Regulation Highlight

SAT applies credit grade to use of VAT invoices

Recently, the SAT issued the Public Notice 2016 No. 71 to administrate the use of VAT invoices by category depending on credit grades of taxpayers, which takes effect from December 1, 2016. A taxpayer rated as credit grade A or grade B may purchase VAT invoices in an amount which not exceeding three or two months' use on a single occasion respectively. Furthermore, the scope of general VAT taxpayers eligible to the cancellation of VAT invoice verification for taxpayers with grade A and grade B will be expanded to cover general VAT taxpayers rated as grade C.

Official appearance of environmental protection tax in China

The Environmental Protection Tax Law has been adopted on December 25, 2016, which marked the official appearance of the environmental protection tax in China. The Law will take effect as of January 1, 2018. According to the Law, taxpayers of the environmental protection tax shall be enterprises, public institutions, and other manufacturers and business operators directly discharging pollutants into the environment and pollutants subject to the tax shall include air pollutants, water pollutants, solid waste, and noise.

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Broadening horizons

„We must be continuously on alert for new developments to be able to master challenges in the best possible way. With curiosity and an innovative approach, we are creating forward-looking solutions.“

Rödl & Partner

„The building of human towers requires each team member to again and again attempt something new. In this way, we are able to rise above the challenge together.“

Castellers de Barcelona



„Each and every person counts“ – to the Castellers and to us.

Human towers symbolise in a unique way the Rödl & Partner corporate culture. They personify our philosophy of solidarity, balance, courage and team spirit. They stand for the growth that is based on own resources, the growth which has made Rödl & Partner the company we are today. „Força, Equilibri, Valor i Seny“ (strength, equilibrium, valour and common sense) is the Catalan motto of all Castellers, describing their fundamental values very accurately. It is to our liking and also reflects our mentality. Therefore Rödl & Partner embarked on a collaborative journey with the representatives of this long-standing tradition of human towers – Castellers de Barcelona – in May 2011. The association from Barcelona stands, among many other things, for this intangible cultural heritage.

Imprint: Issue January 2017

Publisher: **Rödl & Partner China**
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