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## Legislation Express

### **China Cuts Import Tariff, Increases Export Rebate**

The State Council, the Supreme Government agency in China, announced that it will cut import tariffs on 1,585 taxable items in order to “serve industrial upgrading, lower corporate costs and meet domestic demand”. On the other hand, the Central Government announced the increase of export tax rebates and trimming of export tax brackets from 7 to 5. The changes will take effect Nov. 1, 2018.

According to the revised policies, the average import tariffs on over fifteen hundred products will be lowered to 7.8% from 10.5%. All exports with rebate rates currently in the 15% group and some in the 13% group will be set at 16%. Exports that now receive a 9% rebate will be set at 10%, while those receiving 5% will be increased to either 6% or 10%.

The move to adjust import tariffs and rebate rates is sending out a strong signal of China’s determination to deal with the escalating trade tensions positively. Under the current situation of rising trade protectionism, the revised policy on export rebates will allow exporters to better cope with external challenges. The downward adjustment of import tariffs will hopefully fulfill the pledges to further open up China’s consumer market amid rising tension with some of its biggest trade partners, e.g. the additional tariffs arising from escalating trade frictions between China and the United States.

A full list of the adjustment is accessible at:

[http://szs.mof.gov.cn/zhengwuxinxi/zhengcefabu/201810/t20181019\\_3050975.html](http://szs.mof.gov.cn/zhengwuxinxi/zhengcefabu/201810/t20181019_3050975.html)

(Official Notice on the Increase of Export Tax Rebate released by MOF P.R. China)

[http://gss.mof.gov.cn/zhengwuxinxi/zhengcefabu/201809/t20180930\\_3033432.html](http://gss.mof.gov.cn/zhengwuxinxi/zhengcefabu/201809/t20180930_3033432.html)

(Official Notice on the Cut of Import Tariffs released by MOF P.R. China)

### **SAT to Accelerate Export Tax Rebate**

On Oct. 15, 2018, the State Administration of Taxation announced the acceleration of the Export Tax Rebate, of immediate effect. SAT said tax agencies would take various

measures to optimize the export tax rebate procedures, launch paperless tax rebate declarations and support new types of foreign trade businesses.

The announcement lowered the threshold for first-class export companies and proposed to launch paperless tax rebate declarations nationwide for all first and second class export companies. It also states that tax authorities would guide foreign trade integrated service enterprises in establishing their internal control system to prevent any risk intax refund.

Following the above, export enterprises with good tax records and high credit ratings will be able to adjust their management category and expedite their tax rebate procedures. Paperless tax rebate declaration is not only good for the environment but is also the key to accelerating the pace of export tax rebate. Foreign trade integrated service enterprises are advised to start reviewing their internal control system to ensure compliance with tax laws and regulations under the paperless arrangement.

### **New Measures Set for IFSA on Money Laundering & Terrorism**

On Oct. 10 2018, the People's Bank of China, in collaboration with China Bank and Insurance Regulatory Commission and China Security Regulatory Commission, issued the Administrative Measures for Anti-Money Laundering and Counter-Terrorism Financing (Measures)for Internet Financial Service Agencies (IFSA). The Measures takes into account the trend of international and domestic regulations and reminds institutions to take risk-based approaches when carrying out related work. The Measures will come into effect on Jan. 1, 2019.

The Measures applies to IFSA established through approval by or filed with competent authorities within China. Basic obligations the IFSA should abide to include establishing internal controls for anti-money laundering and anti-terrorist financing, setting up effective customer identification mechanism, submitting large and suspicious transaction reports, monitoring the list of terrorism and preserving customer identity data and transaction records. The Measures stipulates that the IFSA shall accept on-site inspections, off-site supervision and anti-money laundering and anti-terrorism financing investigations.

The Measures places more scrutiny in the existing internet financial market. It calls

for higher and stricter requirements on the IFSA. There is no doubt that China is determined to fight against money laundering and terrorism and individuals and companies operating in China must ensure full compliance of the law.

### **China Revises Company Law to Encourage Stock Buyback**

National People's Congress Standing Committee approved the implementation of an amendment in the Company Law on Oct. 28, 2018. The amendment, which was first announced in September and went through revisions summarized from public comments, focuses on the stock buyback of stock companies.

The revision expands the criteria (from 4 to 6) on when buyback is allowed and promotes the practicality and convenience for stock buyback. However, the procedure for the Board to decide a buyback is slightly restricted to prevent misuse of the legal procedures.

The revision is aimed at forming a more mature practice for stock buyback. Stock companies, especially A-listed companies, will now be permitted to buyback its shares for the purpose of stabilizing its ownership interest and optimizing its capital structure with more options that were not legally allowed prior to the enforcement of this amendment. This is important to promote market confidence under the current pessimistic outlook of the China stock market.

### **Hainan Pilot Free Trade Zone Officially Approved**

The Government of China (GOC) announced on Oct.16, 2018 that it has approved the comprehensive plan to set up the Hainan Pilot Free Trade Zone (HPFTZ). The plan promotes HPFTZ as an effective and administratively safe environment for cross-border services, international logistics and tourism development. The area is expected to be highly developed by 2020.

HPFTZ will be the 12<sup>th</sup> and the largest free trade zone of China. HPFTZ was first brought into public light by President Xi in April 2018, at the 30th anniversary for Hainan's establishment. The plan promises to create convenience and easier market access for international trade by simplifying administrative procedures. It is considered another big step for the GOC to further open up its market to the world.

While detailed regulations are still pending, HPFTZ aims to provide foreign investors with greater flexibility to invest in fields that are otherwise more restricted in other areas of China.

### **Shanghai Unveils First Negative List of Cross-border Trade Services**

Shanghai Municipal Government announced on Oct. 9, 2018 the Implementation Measures for the Negative List Management Model of Cross-border Trade Services in the China (Shanghai) Pilot Free Trade Zone and the Special Management Measures for the list. This is an effort to further carry out China's opening-up policy and create a sound business environment for foreign investors.

The negative list will come into effect on Nov. 1, 2018. The implementation measures comprise 15 articles, mainly covering the establishment of the negative list management model, the standards for the formation, the classification of the negative list and the special management measures for overseas services and service providers. The negative list is made up of two parts, of which the "List of Special Management Measures" sets out a total of 159 measures, involving 13 categories and 31 industries.

The implementation of the negative list aims to help reduce barriers of trade services and build a market that features more open and free services trade. Shanghai will introduce further measures to promote opening up and build itself into an international stronghold of service trade, Wu Qing, deputy mayor of Shanghai, said.

### **Business License & Operation Permit Separated for 106 items**

On Oct. 10 2018, the State Council issued a notice of reform on the "Separation of Operation Permits & Business Licenses" for the first batch of 106 administratively examined and approved items. The reform, effective Nov.10, will abolish market entry review for related enterprises that are capable of autonomous management while those that need to complete the review and can rectify non-compliant issues of required approval will be notified. The administrative review will be retained for businesses that may affect public, economic or ecological security.

According to Premier Li, the reform, piloted late 2015 in Shanghai Pudong New Area, will be rolled out at different pace nationwide, taking into consideration that business realities differ across the country. The implementation is aimed at reducing administrative costs for enterprises in the related fields while expediting procedures for them to efficiently foster a business environment of international standards.

Supervision during and after approvals will be further stepped up through information sharing, synergistic supervision and coordinated reward and punishment established among departments. The implementation of this reform is expected to provide more convenience for the related enterprises, making market access easier for start-up and innovation.

### **Enterprises not Paying Social Security to be Blacklisted**

The Ministry of Human Resources and Social Security recently published a draft memorandum on the interim measures to administer a "blacklist". Social security agencies at all levels are required to incorporate the "blacklist" information into local and national credit information sharing platforms.

Based on the relevant laws and regulations, if the employers and operators violate the above code of conduct, they will face operational limitations in the subsequent five years, e.g. restrictions in government bidding, issuance of production licenses and qualification reviews.

Entrepreneurs are advised to review the new social security policy and strictly adhere to the measures. It is important to consider them in the strategic development of the enterprise and where necessary, implement changes in the employment and salary structure accordingly.

## Case Highlights

### Chinese Professor Arrested in Texas for Economic Espionage

Houston police announced on Oct. 9 that a Chinese Professor, Keping Xie, who lectured in Texas was arrested under the accusation of economic espionage. Xie is a prominent professor majoring in cancer research. Officials say that the Texas police actually started off the investigation in April 2018



on alleged tampering of Government records but ended up finding traces of economic espionage and possession of child porn.

The professor denied all the charges after his bail. “Time will prove my innocence,” he said in an interview. His attorney explained that the alleged child porn was nothing except for a thumbnail picture that could be downloaded unintentionally and restored from the internet when viewing websites. The Chinese Government has not commented on the issue.

Xie is a star expert in Chinese science. He was elected as a member of the Thousand Talent Project, the most significant award in the Chinese science research. Apart from Xie, two other members of the Project have also been arrested for suspected fraud and receipt of compensation from the Chinese Government. Although these cases are still pending, they have led the U.S. authority to suspect and investigate those talents in the Project for spying for the Chinese Government.

The series of cases may affect the chances of Chinese technicians looking to further their education in the U.S. It may also result in Americans questioning the ethics of Chinese professionals, bringing unnecessary negative worldwide attention. The U.S. Government protects technology export seriously- a presentation of technology in any way to foreigners, whether in or out of America, is considered an export action. It is subject to the export regulations and failure to comply with the related laws and regulations may bring criminal investigations.

## Will the Moon Shine through the Clouds Covering JD.com?

Liu, 45, the founder of China's e-commerce giant JD.com, was arrested on Aug. 31 in Hennepin country on the suspicion of rape. He was released without bail the following afternoon and went back to China with a pledge to co-operate with Minneapolis police. According to Minneapolis police, an initial investigation into the rape allegation against Liu has been completed. The matter has been handed to local prosecutors for possible charges. Liu has denied any wrongdoings and so far no charges have been laid by prosecutors in the U.S.

On Oct. 12, Liu made a public appearance with his wife in the UK, which appeared to show that all is well on the domestic front. "As long as the whole family is together, life is complete. I hope that with perseverance the clouds will part to show the moon," Liu's wife, Zhang Zetian, posted on the social media after the scandal broke out.

However, are things improving as Zhang wished? Although it has been officially announced that Liu will continue to lead the company and the case does not affect the daily operations of the company, there appears to be public concerns over JD's stability and performance. The pending case has continued



to drag down JD's share price for the month since Liu's arrest. Moreover JD has also been brought to class action in the U.S for allegedly issuing materially misleading information related to Liu's case to the investing public. The investors around the world are questioning JD's future and wondering if JD's business will take a toll if a trial does begin. The charges brought against Liu have obviously resulted in negative media coverage which adversely impacts JD.



## Tax Evasion - First Timer Exempted from Criminal Charges

The recent penalty imposed by the State Administration of Taxation (SAT) on famous Chinese actress Fan Bingbing for tax evasion amounting to more than RMB 140 million (US\$20.3 million) has aroused fierce discussions on China's social media networks. According to SAT's announcement, if Fan pays around RMB 884 million in taxes, fines and overdue surcharges within a defined period, she will not face criminal charges.



According to China's Criminal Law (2009 amendments), if a tax evader pays his/her tax due, overdue surcharge and fine within the period defined by the tax authorities, he/she will be exempted from criminal charges. However, that immunity will be lost if the tax evader commits the same offence

twice or more within five years. Thus, under the current law, Fan, being a first-timer in tax evasion, is legally exempt from criminal charges if she pays the required amount on time.

Nevertheless, heated discussions surround that decision. Some argue that Fan deserves criminal penalties, not just monetary fines; some even fear that her case may set a precedence, prompting artistes to believe that money is the only price to pay for evading taxes. Some questioned if Fan had evaded tax many times before but was only been found doing so this time. That possibility does exist but it does not change the fact in Fan's case whereby the law defines "first time" as first time one is found guilty and charged.

## China's Online Used-Car Dealer Ordered to Stop False Advertising

China's biggest online used-car dealer Guazi has been sued by its longtime rival Renrenche in the Beijing Chaoyang District Court. Renrenche claims that misleading descriptions by Guazi in a commercial aired on the online video platform iQiYi are a practice of unfair competition and demands compensation of RMB 20 million. The

court issued an injunction on Sep. 28, 2018, ordering Guazi and iQiYi to immediately stop distributing and airing the controversial commercial.

The court held that the commercial could mislead the public members to believe that guazi.com is the best used-car trading platform in China. The Advertising Law explicitly outlaws the use of expressions like "the best", "the highest class" in an advertisement. As market competition is a complicated and dynamic process, it is deemed inappropriate for any business operator to advertise that it has a competitive edge over other operators. Guazi has apparently violated the law in this case.

The Advertising Law was first introduced in China in 1995 and was amended on Sep. 1, 2015. The amendment broadens the definition of "false advertising" by prohibiting both false and misleading advertising contents. It is therefore advisable for enterprises to review their advertising practices in China to ensure compliance with the Advertising Law. It is the true representation and reliability of businesses that really matter to the public.

### **Notorious Changsheng Slapped in Vaccine Scandal**

One of China's biggest vaccine makers, Changsheng Bio-technology Co. Ltd. (Changsheng), was hit with penalties totaling RMB 9.1 billion (appx. US\$1.32 billion) after it was charged for falsifying data on a rabies vaccine. The firm's chairwoman and 14 other people were arrested in connection with the scandal in July, while more than a dozen national, provincial and local officials have been sacked.

The State Drug Administration, Jilin Food and Drug Administration and China Securities Regulatory Commission announced a series of administrative penalties on Oct. 16, 2018 against Changsheng for illegal production of human rabies vaccines. On the same day, the National Health Commission said the families of those who died due to the problematic vaccine will receive a one-off compensation of RMB 650,000 for each victim.

This latest vaccine scandal follows a series of fake and substandard food and drugs cases in China. Massive fines and asset seizures are the latest moves by authorities to penalize those found guilty in these cases. The Government hopes the society can regain confidence in China's vaccine system and in many other things. Heavier penalties and a more transparent and open regulation are essential to achieving this

aim.

### **First Bitcoin Mining Machine Case Ruled in China**



On Oct. 10, the Hangzhou Internet Court announced the first Bitcoin mining machine case ruled by a Chinese court in a dispute over its internet shopping contract. The Court held that while the issuance of tokens and financing activities were banned, the laws and regulations do not prohibit the

production and circulation of Bitcoins. Therefore, the Court threw out the claim of the plaintiff and viewed the online contract as legal and effective.

The plaintiff, Chen, had purchased 20 units of Bitcoin mining machines from the website of Zhejiang Communication Technology (ZCT) and paid all the money in advance. Chen subsequently demanded a full refund of the payment made plus interest, citing that the Central Bank and other Ministries have banned the issuance of tokens and financing activities, thus certain transactions relating to the Bitcoin production machines were suspected to be illegal. He also claimed that consumers have the right to return the goods without reason within 7 days from the date of receipt.

Bitcoin is a virtual object created in the internet environment. While it does not have monetary attributes, it has commodity attributes. Bitcoin mining machine is a special equipment used to generate Bitcoins and has the attributes of an asset. At the hearing, the Court concluded that the online contract was a valid sales and purchase agreement established according to the law. It could be found that the as long as the contract does not violate the prohibition regulated in the current law and regulations, the contract would be deemed as legal and effective.

## Hiways Insights

### **USMCA : A Poisonous Pill for China?**

A newly announced US-Mexico-Canada Agreement (USMCA) on Oct. 2 has brought wide attention in China, in particular its Article 32.10 which aims at preventing parties in USMCA (especially Canada and Mexico) from signing FTA with non-market economy countries (NME) without joint consent from all parties (especially the U.S.). The clause is viewed by many as being targeted at China in view of the trade war between the two countries. Very few countries in the world are also recognized by the U.S. as NMEs. News said Trump may urge other US trade partners, like Europe and Japan, to do the same in their future bilingual FTAs. Chinese officials claim the NME clause violates WTO agreements and strongly oppose the “way to impose one country’s interest above other countries”.

The clause appears to be part of a series of punches that Trump swings at Beijing. Trump’s administration has imposed three rounds of additional tax duties on goods from China – the first on Jul. 6 on US\$34 billion worth of goods, the second on Aug. 23 at US\$16 billion and the third on Sep. 24 at US\$200 billion. In retaliation, China has imposed additional duties on US\$50 billion imports from the U.S. With these going back and forth, no one knows when and if the trade war will end.

With the abovementioned clause, the U.S. will have veto right on any FTAs proposed by China to Canada and Mexico. However, despite the clause in the USMCA, Canadian Premier Trudeau recently claimed that he is considering a new trade agreement with China as Canada recognizes the importance of market diversity from negotiating with the U.S. Canada’s high dependence on U.S. imports has placed them in a weak position in the USMCA negotiation. Since no FTA exists between China and Canada currently, the clause may have little influence on China-Canada trade at the moment.

Other allies of the U.S. may also not accept the clause as it prevents them from fully accessing the biggest market in the world. China has already signed 16 FTAs with 24 countries and districts, including Korea, Singapore and Australia, which also signed FTAs with the U.S. No NME clauses are included in these FTAs. These countries have closer trade relationship with China based on geopolitical position. We view it as unlikely that they would agree to the U.S. including such clause in the already signed trade agreements.

We believe the clause may not affect China-related trade in a significant way --- at least not at this stage. The USMCA has yet to be approved by legislations from all three countries, hence the effect is still unknown. We will provide further analysis on this matter if new situations arise.

### Growing IPR Protection in China



Imitation goods? Copycats? Intellectual Property infringers? These are often the common stereotype views of China. Many have raised concerns whether the laws and regulations protecting Intellectual Property rights (IPR) can be properly enforced in China. These views might have held some truth in the past but China has come a long way as far as IPR protection is concerned.

Prior to 1985, there was no patent law at all in China. However, since the Patent Law of China came into effect on Apr. 1, 1985, the country has continued to review and strengthen its intellectual property (IP) laws and enforcement mechanisms. To address the increasing volume of IP litigation, China established 3 specialized IP courts in Beijing, Shanghai and Guangzhou in 2017. IP courtrooms with cross-regional jurisdictions were also instituted in 15 cities such as Nanjing, Suzhou and Wuhan. According to a white paper released by the Information Office of the State Council on Sep. 24, 2018, the former director-general of the World Intellectual Property Organisation (WIPO), Dr Arpad Bogoch, was quoted as saying that China has built a full-fledged IP legal framework of high standard at a speed unmatched in the history of IP protection.

China is now also seen by foreigners as a more favorable venue for IP litigation due to its speed in judicial process. On average, Beijing's IP court concluded cases within 125 days compared to 18 months in Europe. In the USA, the median time-to-trial alone is 2.4 years, according to a study by Price Waterhouse Coopers (PWC). Per the Sep. 2018 white paper, China adopts a dual-track protection system where IP right holders can seek not only judicial but also administrative protection.

In late Jul. 2018, the Supreme Court released 2 reports on the current status of Chinese IP judicial protection. Per the reports, the total number of newly received and concluded IP cases (include 1st instance, 2nd instance and application for retrial) in all China courts in 2017 were up 33.5% and 31.4% respectively over 2016. Through these reports, one can conclude that the Chinese IP judicial system has greatly improved and that IPR protection is increasingly valued in the country.

The expansion of China's IPR enforcement has resulted in several international landmark victories. In early 2017, the Beijing IP Court ordered 3 Chinese shoemakers to pay New Balance US\$1.5M for trademark infringement. In Aug. 2017, the Higher Court of Fujian Province ruled in favor of Under Armour, Inc. for trademark infringement by a Fujian sportswear company and awarded Under Armour a sum of US\$300,000. This case was significant because the preliminary injunction was awarded before the case was tried in full. In Oct. 2018, the Foshan Intermediate People's Court in Guangdong Province awarded the British luxury brand Alfred Dunhill US\$1.44M after Chinese brand Danhuoli was found guilty of trademark infringement and unfair competition.

It is undeniable that over the years, China's awareness in IPR protection has definitely risen and efforts to protect IPRs, both domestic and foreign, have intensified. These further strengthen China's growing reputation for IPR protection and gradually build up confidence of foreign investors in this field. The effort goes to show that China recognizes the importance of IPR protection for its overall economic development in the opening up regime.