

Administrative Measures on the General Anti-Avoidance Rule (GAAR) of the PRC

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Chapter I — General Provisions

Article 1 — These Measures are formulated in accordance with the Enterprise Income Tax Law of the People's Republic of China (hereinafter referred to as the "Enterprise Income Tax Law"), the Tax Collection and Administration Law of the People's Republic of China and the implementing regulations and rules thereof, and relevant tax treaties and agreements, for the purpose of regulating the application of the General Anti-Avoidance Rule, strengthening tax administration, and combating tax avoidance.

Article 2 — These Measures apply to enterprise income tax matters where the tax authority applies the General Anti-Avoidance Rule (GAAR) to make special tax adjustments in respect of an enterprise's arrangements that lack a reasonable commercial purpose and result in a reduction, exemption, or deferral of tax payable.

Article 3 — For the purposes of these Measures, the principles of tax administration shall include:

(1) the substance-over-form principle, under which the tax authority shall examine the economic substance of an arrangement beyond its legal form;

(2) the business purpose principle, under which an arrangement lacking a reasonable commercial purpose and whose main purpose is to obtain a tax benefit shall be subject to adjustment;

(3) the arm's length principle, under which arrangements between related parties shall be consistent with those that would have been adopted by independent enterprises under comparable circumstances.

Article 4 — The tax authority shall follow the principle of substance over form, applying professional judgment, to determine the tax treatment of an enterprise's tax avoidance arrangement in accordance with its economic substance. Where an arrangement lacks a reasonable commercial purpose, the tax authority has the power to re-characterize the arrangement and make a special tax adjustment.

Article 5 — For the purposes of these Measures, "tax avoidance arrangement" means an arrangement that satisfies all of the following characteristics:

(1) the arrangement is unusual in form, complex in structure, or inconsistent with common commercial practice in the industry;

(2) the arrangement results in a reduction, exemption, deferral, or refund of tax that would otherwise be payable;

(3) the main purpose of the arrangement or one of the main purposes of the arrangement is to obtain a tax benefit;

(4) the tax benefit derived from the arrangement cannot be justified by any non-tax commercial purpose.

Article 6 — In exercising the GAAR, the tax authority shall base its determination on facts and evidence, shall follow statutory procedures, and shall respect the legitimate rights and interests of the taxpayer. The tax authority shall maintain the confidentiality of the information and materials obtained from the taxpayer during the investigation.

Chapter II — Procedures for Tax Investigation

Article 7 — The tax authority at or above the provincial level may, based on its own risk assessment findings, initiate a GAAR investigation. The tax authority shall notify the taxpayer in writing of the commencement of the investigation and the reasons therefor.

Article 8 — The tax authority may employ the following methods during a GAAR investigation:

(1) requesting the taxpayer to provide relevant documentation, including agreements, contracts, articles of association, board resolutions, financial statements, and business plans;

(2) conducting on-site inspections, interviews, and inquiries;

(3) requesting third-party information from other government authorities, financial institutions, or counterparties;

(4) employing external experts or professional advisors to assist in the investigation;

(5) exchanging information with the tax authorities of other jurisdictions under applicable tax treaties or tax information exchange agreements.

Article 9 — During the investigation, the taxpayer has the right to present its case and submit evidence demonstrating that the arrangement has a reasonable commercial purpose and is not a tax avoidance arrangement. The taxpayer shall cooperate with the investigation and provide truthful and complete information and materials.

Article 10 — The tax authority shall complete the GAAR investigation within one year from the date of commencement. The investigation period may be extended with the approval of the tax authority at the level that initiated the investigation, and the total investigation period shall not exceed two years. The taxpayer

shall be notified of any extension in writing.

Article 11 — Upon completion of the investigation, the tax authority shall issue a written investigation report, which shall include:

- (1) a description of the arrangement under investigation and the parties involved;
- (2) the analysis of whether the arrangement constitutes a tax avoidance arrangement;
- (3) the proposed tax adjustment and the legal basis therefor;
- (4) the evidence relied upon;
- (5) the conclusions of the investigation.

Chapter III — Procedures for Tax Adjustment

Article 12 — Where the tax authority determines, based on the investigation report, that a tax avoidance arrangement exists, it shall issue a notice of proposed special tax adjustment to the taxpayer. The notice shall set out the proposed adjustment, the legal basis, and the method of calculating the adjustment amount.

Article 13 — Within 15 days of receipt of the notice of proposed special tax adjustment, the taxpayer may submit a written statement of its position and present evidence and arguments in its defense. The tax authority shall consider the taxpayer's submission before making a final determination.

Article 14 — After considering the taxpayer's submissions, the tax authority shall make a final determination and issue a notice of special tax adjustment to the taxpayer. The notice shall specify:

- (1) the amount of tax payable as a result of the adjustment;
- (2) the manner and time limit for payment of the adjusted tax;
- (3) the taxpayer's right to apply for administrative reconsideration or file an administrative lawsuit.

Article 15 — The tax authority may, when making a special tax adjustment, re-characterize the tax avoidance arrangement by:

- (1) disregarding the existence of an entity or an arrangement that has no commercial substance;
- (2) re-characterizing a transaction in accordance with its substance;
- (3) reallocating income, deductions, or credits among the relevant parties;
- (4) applying a different tax treatment to a transaction or arrangement;
- (5) adopting any other reasonable method of adjustment.

Article 16 — Interest shall accrue on the amount of tax underpaid as a result of the tax avoidance arrangement, calculated from the day following the due date for tax payment of the relevant tax period to the date of actual payment. The interest rate shall be the benchmark RMB lending rate published by the People's Bank of China for the corresponding period plus five percentage points, as prescribed in the Implementing Regulations of the Enterprise Income Tax Law.

Article 17 — Where a tax avoidance arrangement results in a reduction or exemption of tax payable that is obtained through fraud, the tax authority may impose penalties in accordance with the Tax Collection and Administration Law, in addition to recovering the tax and interest.

Chapter IV — Dispute Resolution

Article 18 — A taxpayer that disagrees with the notice of special tax adjustment issued by the tax authority may, within 60 days of receipt of the notice, apply for administrative reconsideration in accordance with the Administrative Reconsideration Law, or may file an administrative lawsuit in accordance with the

Administrative Litigation Law. The taxpayer shall pay the tax assessed or provide a corresponding guarantee before filing an administrative reconsideration or lawsuit, unless otherwise provided by law.

Article 19 — Where the tax authority's special tax adjustment involves an arrangement between associated enterprises located in different countries or regions, the taxpayer may request the competent tax authority to initiate a mutual agreement procedure (MAP) under the relevant tax treaty. The MAP shall be conducted in accordance with the applicable tax treaty and the relevant domestic procedural rules.

Article 20 — Where the taxpayer's arrangement involves cross-border transactions and the taxpayer is subject to an adjustment by the Chinese tax authority that results in double taxation, the taxpayer may apply for relief through the MAP under the applicable tax treaty, or seek corresponding adjustment under the domestic law procedures for transfer pricing.

Chapter V — Supplementary Provisions

Article 21 — These Measures shall apply to special tax adjustments for enterprise income tax matters arising from tax avoidance arrangements occurring on or after February 1, 2015. For tax avoidance arrangements entered into before this date, the relevant laws, regulations, and rules in force at the time of the arrangement shall apply.

Article 22 — The tax authority shall publish anonymized GAAR cases to provide guidance to taxpayers and to enhance transparency and consistency in the application of the GAAR, provided that the confidentiality of the taxpayer's information is protected.

Article 23 — The State Administration of Taxation shall be responsible for the interpretation of these Measures. Matters not expressly provided for in these Measures shall be governed by the relevant provisions of the Enterprise Income Tax Law, the Tax Collection and Administration Law, and the applicable tax treaties.

Article 24 — These Measures shall take effect as of February 1, 2015.

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