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羅 申 美 稅 務 諮 詢 有 限 公 司

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NEW URBAN MAINTENANCE AND CONSTRUCTION TAX LAW, DEED TAX LAW AND STAMP TAX LAW OF THE PRC

The Standard Committee of the 13th National People's Congress has passed the following three tax laws in August 2020 and June 2021:

- *Urban Maintenance and Construction Tax Law ("UMCT Law") (中华人民共和国城市维护建设税法)*
- *Deed Tax Law ("DT Law") (中华人民共和国契税法)*
- *Stamp Tax Law ("ST Law") (中华人民共和国印花税法)*

The UMCT Law and the DT Law have been effective from 1 September 2021, whilst the ST Law will be effective 1 July 2022.

In this Tax Flash, we summarise the major issues and features relating to these three taxes' administration and collection practices.

1. URBAN MAINTENANCE AND CONSTRUCTION TAX LAW

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| • <i>Passed at the Standard Committee of the 13th National People's Congress on 11 August 2020</i> |
| • <i>Effective 1 September 2021</i> |
| • <i>Repeal the <Provisional Regulations of Urban Maintenance and Construction Tax of the People's Republic of China> ("UMCT Regulations") promulgated in 1985</i> |
| • <i>Relevant Circulars</i> <ul style="list-style-type: none">(a) <i><Public Notice on Matters Regarding the Tax Basis Determination of Urban Maintenance and Construction Tax> jointly issued by the Ministry of Finance ("MOF") and the State Taxation Administration ("STA") on 24 August 2021 ("Public Notice [2021] No. 28")</i>(b) <i><Public Notice on Matters Regarding the Collection and Administration of Urban Maintenance and Construction Tax> issued by the STA on 31 August 2021 ("Public Notice [2021] No. 26")</i> |

Overview

- UMCT is a major local surtax levied on a taxpayer's Value Added Tax ("VAT") and Consumption Tax ("CT") payable:

$$\text{UMCT Payable} = \text{VAT and CT Payable} \times \text{applicable tax rate}$$

- UMCT rates can be 1%, 5%, or 7%, depending on the taxpayer's location.
- UMCT obligation arises simultaneously with the corresponding VAT/CT obligations; accordingly, it should be withheld simultaneously with VAT/CT by the VAT/CT withholding agent.
- Unlike VAT and CT, UMCT is not a creditable tax.
- UMCT is payable in respect of the sale of immovable properties in the PRC and exports of services. However, no UMCT shall be levied on the importation of goods and the provision of services or intangible assets by overseas entities and individuals¹.
- Art. 1 of Public Notice [2021] No. 26 and 28 clarifies the UMCT taxable basis should be determined and calculated as follow:
 - (i) The amount of VAT and CT payable calculated per relevant laws, regulations and tax policies;
 - (ii) excluding the VAT/CT paid for imported goods or the sale of services and intangible assets by overseas entities/individuals;
 - (iii) adding the exempt-credit VAT² under the exemption, credit and refund (ECR) method; and
 - (iv) deducting the reduced/exempted VAT/CT and the refund amount of end-of-period excess input VAT credits.
- Regarding the timing of tax obligation of UMCT levied on the exempt-credit VAT, Art. 3 of Public Notice [2021] No. 26 stipulates that it should be the following filing period after the tax authority verifies the amount of exemption-credit VAT.
- The new UMCT Law authorizes the State Council to grant UMCT reductions or exemptions to encourage the construction of significant public infrastructure, support specific industries or groups, or promote notable events.
- The taxable basis of Education Surcharge and Local Education Surcharge, according to Art. 2 of Public Notice [2021] No. 28, should be consistent with that of UMCT.

¹ The repealing UMCT Regulations was unclear on whether UMCT should be levied on importation of services and intangible assets. Nevertheless, most of the local tax authorities would request domestic taxpayers to withhold VAT, UMCT and other surcharges at the same time on the service fees paid or payable to overseas entities.

² "Exempt-credit VAT" refers to the part of export VAT rebate that is used to offset the VAT payable on sales in domestic market. It generally exists for VAT taxpayers conducting export manufacturing businesses or export services.

2. DEED TAX LAW

<ul style="list-style-type: none">• <i>Passed at the Standard Committee of the 13th National People's Congress on 11 August 2020</i>
<ul style="list-style-type: none">• <i>Effective 1 September 2021</i>
<ul style="list-style-type: none">• <i>Repeal the <Provisional Regulations of the People's Republic of China on Deed Tax> ("DT Regulations") promulgated in 1997</i>
<ul style="list-style-type: none">• <i>Relevant Circulars</i><ul style="list-style-type: none">(a) <i><Public Notice on Matters Regarding Continued Implementation of Relevant Deed Tax Policies for Restructuring and Reorganization of Enterprises and Public Institutions> jointly issued by MOF and STA on 26 April 2021 ("Public Notice [2021] No. 17", retroactively effective from 1 January 2021 to 31 December 2023)</i>(b) <i><Public Notice on Matters Regarding the Collection and Administration of Deed Tax> issued by STA on 26 August 2021 ("Public Notice [2021] No. 25")</i>(c) <i><Public Notice on Matters Regarding the preferential policies after the implementation of the Deed Tax Law> issued by MOF and STA on 27 August 2021 ("Public Notice [2021] No. 29")</i>

Overview

- When the title of land use rights (“土地使用权”) or real properties within the territory of the PRC are transferred under the following three scenarios, the transferee (organization or individual) is subject to PRC deed tax:

1. Acquisition of land use rights from the State;
2. Transfer of land use rights³ (through sale, gifting, or exchange);
3. Purchase and sale, gifting, or exchange of real property.

That also applies to transfer in the form of conversion into investment (equity participation), debt repayment, allocation, or reward.

- Consistent with the repealed DT Regulations, under the new DT Law, deed tax is calculated based on the amount of consideration paid for the land use rights or real property, with tax rates ranging from 3% to 5% (local governments can choose a specific rate within the said range):

$$\text{Deed Tax Payable} = \text{consideration paid} / \text{tax base}^4 \times \text{applicable tax rate}$$

The amount of consideration includes cash, non-cash assets, and other economic benefits payable by the transferee.

- In cases where the taxpayer's consideration is significantly lower than the market level, the tax authorities will have the authority to make reasonable adjustments.
- Pursuant to Art. 3 of Public Notice [2021] No. 25, the tax base for Deed Tax shall not include the listed VAT. Taxpayers may consider separately presenting the amount excluding tax and the corresponding VAT amount when preparing the agreement.

³ Excluding the transfer of land contracting management right (土地承包经营权) and land management right (土地经营权).

⁴ For exchange, the tax base is the difference between the price of the exchanged land use rights/properties. For gifting, the tax base is determined by the tax authorities in accordance with the law and with reference to the market prices.

- Examples of Deed Tax exemptions stipulated under Art. 6 of the DT Law include:
 - Government and military units, non-profit schools, medical and social welfare institutions that use the transferred land or premises for office space, teaching, healthcare, scientific research, military, elderly care, or relief purposes;
 - Barren mountains, land, or beaches used for agricultural, forestry, animal husbandry, or fishery production;
 - Title change of land use rights or real properties between husband and wife during their marriage⁵;
 - Inheritance of land use rights and real properties by legal heirs;
 - The land use rights and real properties used by foreign embassies, consulates, and representative offices of international organizations in the PRC.
- The new law also authorizes the State Council to formulate and introduce other tax incentives for social and economic development needs.
- Pursuant to Public Notice [2021] No. 17, for certain types of corporate restructuring and reorganization (e.g. enterprises and public institution restructuring⁶, merger and split, bankruptcy, transfer of assets between enterprises with common owners, and approved debt-to-equity swaps), deed tax can be exempt if certain conditions met.
- Refund of paid deed tax is allowed if the relevant transfer agreement is cancelled or invalid before registration of the legal title.
- Tax authorities and other relevant personnel should keep confidential taxpayers' personal data obtained during DT collection and administration.

3. STAMP TAX LAW

<ul style="list-style-type: none"> • Passed at the Standard Committee of the 13th National People's Congress on 10 June 2021 • Shall take effect 1 July 2022 • Will repeal the <Provisional Regulations of the People's Republic of China on Stamp Duty> ("SD Regulations") promulgated in 1988

Overview

- Entities and individuals that conclude or receive certain taxable documents or enter into securities transactions in the PRC are subject to stamp tax.
- According to Art. 1 of the ST Law, even the taxable documents are concluded outside of the PRC, they are still subject to stamp tax if used in the PRC.

⁵ Pursuant to Art. 1 of Public Notice [2021] No.29, title change of the land use rights or real properties between husband and wife due to divorce is also exempted from Deed Tax.

⁶ The succession of land use rights originally allocated to the restructured enterprises or public institutions through assignment or state capital contribution does not qualify for the exemption.

➤ Taxable documents and the tax rates:

Taxable Documents		Tax Rate	Remarks
Contracts	• Loan contracts with banks or other financial institutions approved by the banking regulatory authority	0.005%	Exclusive of inter-bank borrowing
	• Financial leasing contracts		
	• Purchase & Sale contracts on movable property	0.03%	Exclusive of contracts signed by individuals
	• Contracts of hired work		
	• Construction project contracts		
	• Transportation contracts (cargo transportation contracts and multimodal transportation contracts)		Exclusive of pipeline transportation contracts
	• Technical contracts		Exclusive of contracts for the transfer of patents and technical know-how
	• Lease contracts	0.1%	
	• Custody contracts		
	• Storage contracts		
	• Property insurance contracts		Exclusive of reinsurance contracts
Documents for the transfer of property rights	• Granting of land use rights	0.05%	Inclusive of purchase and sales, inheritance, donation, exchange, and partition
	• Transfer of land use rights and ownership of buildings and structures ⁷		
	• Transfer of equity ⁸		
	• Transfer exclusive right to use trademarks, copyrights, patent rights and use rights of technical know-how	0.03%	
Business Account Book		0.025% ⁹	
Securities Transaction	➤ Refers to securities and stock-based depositary receipts traded on stock exchanges	0.1%	Levied only on the transferor ¹⁰

- Art. 5 of the ST Law stipulates that the tax base for taxable contracts and property right transfer documents shall not include the listed VAT. Like Deed Tax, taxpayers may consider separately presenting the amount excluding tax and the corresponding VAT amount when preparing the agreement.
- Where a taxable contract or a property right transfer document does not list out the transfer price, the tax base for ST shall be determined according to the following order:
- the actual settled amount;
 - market price (as of the date the document is concluded); and
 - price under governmental guidance.


For securities transactions, if no transfer price is set out, the tax base shall be determined based on the closing price of the securities on the trading day before the transfer registration formalities are

⁷ Exclusive of land contracting management right (土地承包经营权) and land management right (土地经营权).

⁸ Exclusive of transactions that are subject to stamp tax for securities transactions.

⁹ The ST Law abolishes the levying stamp duty at RMB 5 on each piece of rights and licenses.

¹⁰ Pursuant to Art. 3 of the ST Law



completed. In the absence of a closing price, the tax base shall be determined based on the face value of the securities.

- Art. 12 of the ST Law has integrated the tax exemptions in the prevailing SD Regulations and other related circulars and introduced additional exemptions such as electronic orders between individuals and e-commerce operators.
- The State Council is authorized to reduce or provide an exemption from stamp tax for national economic and social development needs such as housing needs, enterprise restructuring and bankruptcy, and support the development of small and micro enterprises.
- For taxable contracts and property right transfer documents, stamp tax shall be levied quarterly, annually or on a transaction basis. Taxpayers must declare and pay the tax within 15 days after the end of the current quarter or year if stamp tax is levied on a quarterly or yearly basis. For stamp tax levied on a transactional basis, taxpayers must declare and pay the tax within 15 days after the tax obligation arises.
- Stamp tax for securities transactions shall be levied on a weekly basis. Withholding agents (e.g. securities registration and settlement institutions) should declare and remit the stamp tax and the interest settled by the bank within five days after the end of each week.
- If the ST payer is an overseas entity or individual with a domestic agent, the domestic agent should act as the ST withholding agent. In case there is no agent in the PRC, the taxpayer shall report and pay the stamp tax on his own.
- Taxpayers, withholding agents, and tax authorities (as well as their employees) that violate the new ST Law are liable under <The Administration of Tax Collection Law> and all related administrative regulations.

POINTS TO NOTE

The enforcement of the UMCT Law, DT Law, and ST Law improves the tax certainty that the taxpayers should welcome. However, many practical issues and grey areas remain unresolved (e.g. how an overseas stamp tax payer without a domestic agent reports and pays stamp tax on his own). Besides, subsequent regulations on collecting and administering VAT and CT will likely impact the UMCT, DT and ST. It is expected that more circulars and guidance will be issued shortly to provide further clarifications. Taxpayers should stay abreast of and familiarize themselves with the new regime, closely monitor the regulatory and practice developments and seek professional assistance where necessary.

For further information on the above subject and discussion on the potential impact on your group, please feel free to contact us.

RSM Tax Advisory (Hong Kong) Limited

RSM Hong Kong's dedicated and experienced tax specialists can:

- Advise on tax efficient holding and operational structures for new cross-border investment, including the formation of Hong Kong and Chinese business entities
- Review existing cross-border investment structures, advise on identified deficiencies, quantify any potential exposure from such deficiencies, and further advise on restructuring approach and procedures
- Assist clients to discuss and clarify matters with tax officials, including transfer pricing and advance rulings
- Act as client representative in tax audits and tax investigations
- Provide transaction support services on mergers and acquisitions, including tax due diligence, deal structure advice, tax health checks, related human resources arrangements and other tax compliance and consultation services
- Provide tax expert witness services at Courts.
- Act as tax advisor on transfer pricing and tax compliance reviews for IPO applications.
- Advise on human resources and structuring employment arrangements in a tax-efficient manner
- Advise on tax equalization schemes
- Provide tax compliance services for individual and corporate clients in Hong Kong and China

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Mr. Eric Chen
T +852 2583 1259
E ericchen@rsmhk.com

Mr. Samuel Chan
T +852 2583 1242
E samuelchan@rsmhk.com

Ms. Lilian Poon
T +852 2583 1241
E lilianpoon@rsmhk.com

Mr. Patrick Ho
T +852 2583 1258
E patrickho@rsmhk.com

Mr. Caesar Wong
T +852 2508 2851
E caesarwong@rsmhk.com

Ms. Catherine Tsang
T +852 2583 1256
E catherinetsang@rsmhk.com

Ms. Joanna Lee
T +852 2583 1317
E joannalee@rsmhk.com

Mr. Alan Chow
T +852 2583 1378
E alanchow@rsmhk.com

Ms. Catherine Wong
T +852 2583 1396
E catherinewong@rsmhk.com

Ms. Shirley Lo
T +852 2583 1211
E shirleylo@rsmhk.com

RSM Tax Advisory (Hong Kong) Limited

29th Floor, Lee Garden Two
28 Yun Ping Road
Causeway Bay, Hong Kong

T +852 2598 5123
F +852 2598 7230
E tax@rsmhk.com

www.rsmhk.com

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